

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): November 8, 2021 (November 4, 2021)

AMALGAMATED FINANCIAL CORP.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction  
of incorporation)

001-40136

(Commission File Number)

85-2757101

(IRS Employer Identification  
No.)

275 Seventh Avenue  
New York, New York

(Address of principal executive offices)

10001

(Zip Code)

(212) 895-8988

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of exchange on which registered
Common stock, par value \$0.01 per share	AMAL	The Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR § 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR § 240.12b-2).

Emerging growth company x

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## Item 1.01. Entry into a Material Definitive Agreement.

On November 4, 2021, Amalgamated Financial Corp., a Delaware public benefit corporation (the “**Company**”), completed the issuance and sale of \$85,000,000 aggregate principal amount of its 3.250% Fixed-to-Floating Rate Subordinated Notes Due 2031 (the “**Notes**”) at a public offering price equal to 100% of the aggregate principal amount of the Notes (the “**Offering**”). The Notes were offered pursuant to a prospectus supplement, dated November 4, 2021, to the prospectus, dated October 15, 2021, that forms part of the Company’s Registration Statement on Form S-3 (File No. 333-260076) which was filed by the Company with the U.S. Securities and Exchange Commission under the Securities Act of 1933, as amended.

In connection with the Offering, the Company entered into an underwriting agreement, dated as of November 4, 2021 (the “**Underwriting Agreement**”) with Keefe, Bruyette & Woods, Inc., as representative of the underwriters named in the Underwriting Agreement. The Company estimates that the net proceeds from the Offering, after deducting the underwriting discount and estimated offering expenses, will be approximately \$83,360,600. The Company intends to use the net proceeds of the Offering for general corporate purposes, including for funding the cash consideration to be paid in the Company’s acquisition of Amalgamated Investments Company and for ongoing working capital needs. The Underwriting Agreement contains customary representations, warranties, covenants, closing conditions, indemnification obligations and termination provisions.

The Notes were issued pursuant to a Subordinated Indenture, dated November 8, 2021 (the “**Base Indenture**”), between the Company and U.S. National Bank, as trustee (the “**Trustee**”), as supplemented by a First Supplemental Indenture relating to the Notes, dated November 8, 2021, between the Company and the Trustee (the “**Supplemental Indenture**” and, together with the Base Indenture, the “**Indenture**”). The Indenture governs the terms of the Notes. The Notes will mature on November 15, 2031. From and including the issue date to, but excluding, November 15, 2026 or the date of earlier redemption, the Notes will bear interest at an initial fixed rate of 3.250% per annum, payable semi-annually in arrears. From and including November 15, 2026 to, but excluding, the maturity date or the date of earlier redemption, the Notes will bear interest at a floating rate per annum equal to a benchmark rate, which is expected to be Three-Month Term Secured Overnight Financing Rate (SOFR) (as defined in the Indenture), plus a spread of 230 basis points, payable quarterly in arrears, provided, however, that, in the event that the then-current benchmark rate is less than zero, then the benchmark rate will be deemed to be zero.

The Notes are unsecured subordinated obligations of the Company. The Notes are not savings accounts or deposits of the Company or any of its subsidiaries and are not insured or guaranteed by the FDIC or any other governmental agency or instrumentality. There is no sinking fund for the Notes. The Notes are subordinated in right of payment to the payment of the Company’s existing and future Senior Debt (as defined in the Base Indenture) and structurally subordinated to all of the Company’s subsidiaries’ existing and future indebtedness and other obligations, including the deposit liabilities and claims of other creditors of the Company’s bank subsidiary, Amalgamated Bank. The Notes are obligations of the Company only and are not obligations of, and are not guaranteed by, any of the Company’s subsidiaries.

The Company may, at its option, redeem the Notes in whole or in part on November 15, 2026 and on any interest payment date thereafter. The Company may also, at its option, redeem the Notes at any time, including prior to November 15, 2026, in whole but not in part, upon the occurrence of a “Tax Event” or a “Tier 2 Capital Event” (each as defined in the Supplemental Indenture) or if the Company is required to register as an investment company under the Investment Company Act of 1940, as amended. Any early redemption of the Notes will be subject to obtaining the prior approval of the Board of Governors of the Federal Reserve System (the “**Federal Reserve Board**”) to the extent then required under the rules of the Federal Reserve Board and will be at a redemption price equal to 100% of the principal amount of the Notes plus any accrued and unpaid interest to, but excluding, the redemption date.

An event of default under the Notes will occur, and the payment of principal of the Notes may be accelerated, only in the event of certain limited events involving a receivership, conservatorship, insolvency, liquidation or similar proceeding. A payment failure under the Notes will occur if the Company fails to pay interest on the Notes for ninety (90) days after the payment is due, or if the Company fails to pay the principal of the Notes when due. There are no rights of acceleration of the payment of principal or interest of Notes upon such payment failure.

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Neither the Notes nor the Indenture limit the amount of additional indebtedness or other liabilities, including Senior Debt, that the Company may incur. The Notes and the Indenture also do not contain any restrictions on paying dividends, selling assets, making investments or issuing or repurchasing other securities, or contain any provision that would provide protection to the holders of the Notes against a sudden and dramatic decline in credit quality resulting from a merger, takeover, recapitalization or similar restructuring or any other event involving the Company that may adversely affect its or its subsidiaries' or affiliates' credit quality.

The foregoing descriptions of the Underwriting Agreement, the Base Indenture, the Supplemental Indenture and the Notes do not purport to be complete and are qualified in their entirety by reference to the full text of the Underwriting Agreement, the Base Indenture, the Supplemental Indenture and the Notes. Copies of the Underwriting Agreement, the Base Indenture and the Supplemental Indenture, including the form of Note which is attached as Exhibit A to the Supplemental Indenture, are filed herewith as Exhibit 1.1, Exhibit 4.1 and Exhibit 4.2, respectively, and are incorporated into this Current Report on Form 8-K (this "Report") by reference.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant.**

The information disclosed under Item 1.01 of this Report is incorporated herein by reference.

**Item 7.01. Regulation FD Disclosure.**

The information disclosed under Item 1.01 of this Report is incorporated herein by reference. In addition, on November 8, 2021, the Company issued a press release announcing the closing of the Offering. A copy of the press release is furnished as Exhibit 99.1 and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
1.1	<a href="#"><u>Underwriting Agreement, dated as of November 4, 2021, by and between the Company and Keefe, Bruyette &amp; Woods, Inc., as representative of the underwriters named therein</u></a>
4.1	<a href="#"><u>Subordinated Indenture, dated as of November 8, 2021, by and between the Company and U.S. Bank National Association, as trustee</u></a>
4.2	<a href="#"><u>First Supplemental Indenture, dated as of November 8, 2021, by and between the Company and U.S. Bank National Association, as trustee, with respect to the 3.250% Fixed-to-Floating Rate Subordinated Notes Due 2031</u></a>
4.3	<a href="#"><u>Form of 3.250% Fixed-to-Floating Rate Subordinated Notes due 2031 (included in Exhibit 4.2)</u></a>
5.1	<a href="#"><u>Opinion of Nelson Mullins Riley &amp; Scarborough LLP</u></a>
23.1	<a href="#"><u>Consent of Nelson Mullins Riley &amp; Scarborough LLP (included in Exhibit 5.1)</u></a>
99.1	<a href="#"><u>Press Release of Amalgamated Financial Corp.</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**AMALGAMATED FINANCIAL CORP.**

By: /s/ Priscilla Sims Brown  
Name: Priscilla Sims Brown  
Title: President and Chief Executive Officer

Date: November 8, 2021

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\$85,000,000

AMALGAMATED FINANCIAL CORP.

3.250% Fixed-To-Floating Rate Notes due 2031

UNDERWRITING AGREEMENT

November 4, 2021

KEEFE, BRUYETTE & WOODS, INC.  
787 Seventh Avenue, 4th Floor  
New York, New York 10019

As representative of the Underwriters listed in Schedule A hereto

Ladies and Gentlemen:

Amalgamated Financial Corp., a Delaware public benefit corporation (the “**Company**”), proposes to issue and sell to the several underwriters named in Schedule A hereto (the “**Underwriters**”) pursuant to the terms set forth herein (this “**Agreement**”) \$85,000,000 aggregate principal amount of the Company’s 3.250% Fixed-To-Floating Rate Notes due November 15, 2031 (the “**Securities**”). The Securities will be issued pursuant to an indenture, to be dated as of the Closing Time (as defined below) (the “**Base Indenture**”), between the Company and U.S. Bank National Association, as trustee (the “**Trustee**”), as supplemented by a supplemental indenture thereto relating to the Securities, to be dated as of the Closing Time, between the Company and the Trustee (the “**Supplemental Indenture**” and, together with the Base Indenture, the “**Indenture**”). Keefe, Bruyette & Woods, Inc. (“**KBW**”) has agreed to act as representative of the several Underwriters (in such capacity, the “**Representative**”) in connection with the offering and sale of the Securities.

In all dealings hereunder, the Representative shall act on behalf of each of the Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by the Representative. To the extent there are no additional underwriters listed on Schedule A, the term “Representative” as used herein shall mean you, as Underwriter, and the term “Underwriters” shall mean either the singular or the plural, as the context requires.

The Company has prepared and filed with the United States Securities and Exchange Commission (the “**Commission**”) a registration statement, on Form S-3 (File No. 333-260076) covering the public offering and sale from time to time of certain securities of the Company, including the Securities, under the Securities Act of 1933, as amended (the “**Securities Act**”), and the rules and regulations promulgated thereunder (the “**Securities Act Regulations**”), which registration statement has become effective. Such registration statement, as of any time, means such registration statement as amended by any post-effective amendment thereto at such time, including the exhibits and any schedules thereto at such time, the documents incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the Securities Act and the documents otherwise deemed to be a part thereof as of such time pursuant to Rule 430B of the Securities Act Regulations (“**Rule 430B**”), and is referred to herein as the “**Registration Statement**”; provided, that the “Registration Statement” without reference to a time means such registration statement as amended by any post-effective amendment thereto as of the time of the first contract of sale for the Securities, which time shall be considered the “new effective date” of the Registration Statement with respect to the Securities within the meaning of Rule 430B(f)(2), including the exhibits and schedules thereto as of such time, the documents incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the Securities Act and the documents otherwise deemed to be a part thereof as of such time pursuant to Rule 430B. From and after the date and time of filing of any registration statement increasing the size of the offering pursuant to Rule 462(b) under the Securities Act Regulations (“**Rule 462(b)**”) and such registration statement, a “**Rule 462(b) Registration Statement**”), the term “Registration Statement” shall include the Rule 462(b) Registration Statement. Each preliminary prospectus supplement and the base prospectus used in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act immediately prior to the Applicable Time (as defined below), are collectively referred to herein as a “**preliminary prospectus**.” Promptly after execution and delivery of this Agreement, the Company will prepare and file a final prospectus supplement relating to the Securities in accordance with the provisions of Rule 424(b) of the Securities Act Regulations (“**Rule 424(b)**”). The final prospectus supplement and the base prospectus, in the form first furnished to the Underwriters for use in connection with the offering and sale of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act immediately prior to the Applicable Time (as defined below), are collectively referred to herein as the “**Prospectus**.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement thereto shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (or any successor system) (“**EDGAR**”).

As used in this Agreement:

“**Applicable Time**” means 3:30 p.m., New York City time, on November 4, 2021, or such other time as agreed by the Company and the Representative.

“**Pricing Disclosure Package**” means each Issuer General Use Free Writing Prospectus and the most recent preliminary prospectus furnished to the Underwriters for general distribution to investors prior to the Applicable Time, all considered together.

“**Issuer Free Writing Prospectus**” means (a) the “Term Sheet” (as defined below) and (b) any “issuer free writing prospectus,” as defined in Rule 433 of the Securities Act Regulations (“**Rule 433**”), including, without limitation, any “free writing prospectus” (as defined in Rule 405) relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a “road show that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering thereof that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“**Issuer General Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is intended for general distribution to investors, as evidenced by its being specified in Schedule B hereto.

“**Issuer Limited Use Free Writing Prospectus**” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

“**Term Sheet**” means a pricing term sheet substantially in the form of Schedule C hereto.

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” (or other references of like import) in the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include all such financial statements and schedules and other information incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, prior to the Applicable Time; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include the filing of any document under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations promulgated thereunder (the “**Exchange Act Regulations**”) incorporated or deemed to be incorporated by reference in the Registration Statement, such preliminary prospectus or the Prospectus, as the case may be, at or after the Applicable Time.

**SECTION 1. Representations and Warranties.**

(a) *Representations and Warranties by the Company.* The Company represents and warrants to each Underwriter at the date hereof, the Applicable Time and the Closing Time (as defined below), and agrees with each Underwriter, as follows:

(i) Compliance of the Registration Statement, the Prospectus and Incorporated Documents. The Company meets the requirements for use of Form S-3 under the Securities Act. The Registration Statement is a shelf registration statement, and the offer and sale of the Securities is registered by the Company on such shelf registration statement. Each of the Registration Statement and any post-effective amendment thereto has become effective under the Securities Act and the initial effective date of the Registration Statement is not more than three years before the date of this Agreement. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the Securities Act, no notice of objection of the Commission to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) of the Securities Act Regulations (“**Rule 401(g)(2)**”) has been received by the Company, no order preventing or suspending the use of any preliminary prospectus or the Prospectus or any amendment or supplement thereto has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company’s knowledge, contemplated. The Company has complied with each request (if any) from the Commission for additional information.

Each of the Registration Statement and any post-effective amendment thereto, at the time of its effectiveness, as of each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2), and at the Closing Time complied and will comply in all material respects with the requirements of the Securities Act, the Securities Act Regulations, the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”), and the rules and regulations promulgated under the Trust Indenture Act. Each preliminary prospectus, the Prospectus and any amendment or supplement thereto, at the time each was filed or is hereafter filed with the Commission and at the Closing Time complied and will comply in all material respects with the requirements of the Securities Act and the Securities Act Regulations and are and will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, when they became effective or at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the Exchange Act and the Exchange Act Regulations.

(ii) Accurate Disclosure. Neither the Registration Statement nor any post-effective amendment thereto, at its effective time and at the Closing Time contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. At the Applicable Time, neither (A) the Pricing Disclosure Package nor (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the Pricing Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto, as of its issue date and at the Closing Time, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, at the time the Registration Statement became effective or when such incorporated documents were filed with the Commission, as the case may be, when read together with the other information in the Registration Statement, the Pricing Disclosure Package or the Prospectus, as the case may be, did not, does not and will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. There are no statutes, regulations, documents or contracts of a character required to be described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, or to be filed as an exhibit to the Registration Statement, which are not described or filed as required. There are no business relationships or related person transactions involving the Company or any subsidiary (as defined in Rule 405 under the Securities Act) of the Company (each, a “**Subsidiary**”) or any other person required to be described in the Registration Statement, the Pricing Disclosure Package and the Prospectus that have not been described as required.



The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement or any amendment thereto or the Pricing Disclosure Package or the Prospectus or any amendment or supplement thereto made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representative expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in (i) the first paragraph under the caption “Discount and Expenses,” (ii) the third sentence under the caption “No Public Trading Markets,” and (iii) the first paragraph under the caption “Stabilization,” each under the heading “Underwriting,” in each case, contained in the Pricing Disclosure Package and the Prospectus (collectively, the “**Underwriter Information**”).

(iii) Issuer Free Writing Prospectuses. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus, including any document incorporated by reference therein, that has not been superseded or modified. If, at any time prior to or as of the Closing Time and following issuance of an Issuer Free Writing Prospectus, there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information then contained in the Registration Statement or as a result of which such Issuer Free Writing Prospectus, if republished immediately following such event or development, would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, (A) the Company has promptly notified or will promptly notify the Representatives thereof and (B) the Company has promptly amended or will promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(iv) [Reserved]

(v) Company Not Ineligible Issuer. (A) At the time of filing the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto, (B) at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the Securities Act Regulations) of the Securities and (C) at the Applicable Time, the Company was not and is not an “ineligible issuer,” as defined in Rule 405.

(vi) Independent Accountants. Each of KPMG LLP (“**KPMG**”) and Crowe LLP (“**Crowe**”), the accounting firms that certified the applicable financial statements and supporting schedules of the Company that are included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, is, or was when applicable, (i) an independent public accountant as required by the Securities Act, the Securities Act Regulations, the Exchange Act, the Exchange Act Regulations and the Public Company Accounting Oversight Board (the “**PCAOB**”), (ii) a registered public accounting firm, as defined by the PCAOB, which has not had its registration superseded or revoked and which has not requested that such registration be withdrawn, and (iii) with respect to the Company, is not and has not been in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”) and the rules and regulations of the Commission.

(vii) Financial Statements; Non-GAAP Financial Measures. The financial statements of the Company and its consolidated Subsidiaries (as defined below) included in the Registration Statement, the Pricing Disclosure Package and the Prospectus, together with the related schedules and notes, comply with the requirements of the Securities Act and present fairly in all material respects the financial position of the Company and its consolidated Subsidiaries (as defined below). The financial statements of the Company and its consolidated Subsidiaries (as defined below) have been prepared in conformity with U.S. generally accepted accounting principles (“**GAAP**”) applied on a consistent basis throughout the periods involved, except as otherwise stated therein. The supporting schedules, if any, present fairly in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the Registration Statement, the Pricing Disclosure Package and the Prospectus present fairly in all material respects the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included or incorporated by reference therein. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included in the Registration Statement, any preliminary prospectus or the Prospectus. To the extent applicable, all disclosures contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus, if any, regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G under the Exchange Act and Item 10(e) of Regulation S-K under the Securities Act. The interactive data in eXtensible Business Reporting Language incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus complies in all material respects with the requirements of the Securities Act and the Commission’s rules and guidelines applicable thereto.

(viii) No Material Adverse Change in Business. Since the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except as otherwise stated therein, (A) there has been no material adverse effect, or any development that would reasonably be expected to result in a material adverse effect, (i) on the general affairs, condition (financial or otherwise), business, properties, prospects, management, financial position, stockholders' equity, assets, liabilities or results of operations, of the Company and its Subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business or (ii) in the ability of the Company to perform its obligations under, and to consummate the transactions contemplated by, this Agreement (each of (i) and (ii) a "**Material Adverse Effect**"), (B) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company or any of the Subsidiaries other than repurchases of capital stock pursuant to publicly announced stock repurchase authorizations, (C) there have been no transactions entered into by, and no obligations or liabilities, contingent or otherwise, incurred by the Company or any of the Subsidiaries, whether or not in the ordinary course of business, which are material to the Company and the Subsidiaries, considered as one enterprise, (D) the Company has not purchased any of its outstanding capital stock other than pursuant to publicly announced stock repurchase authorizations and there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock other than cash dividends on the Company's common stock paid in the ordinary course of business or (E) there has been no material loss or interference with the Company's business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, in each case, otherwise than as set forth or contemplated in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(ix) Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not reasonably be expected to result in a Material Adverse Effect.

(x) Good Standing of Subsidiaries. Amalgamated Bank (the "**Bank**") is a bank chartered under the laws of the State of New York and the charter of the Bank is in full force and effect. The Bank is the only "significant subsidiary" of the Company (as such term is defined in Rule 1-02 of Regulation S-X) (the "**Significant Subsidiary**") and is the only depository institution Subsidiary of the Company. The Bank has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of New York, has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not reasonably be expected to result in a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, all of the issued and outstanding capital stock of the Bank has been duly authorized and validly issued, is fully paid and, to the extent applicable, non-assessable and is owned by the Company directly, free and clear of any security interest, mortgage, pledge, lien, encumbrance, or claim; none of the outstanding shares of capital stock of the Bank were issued in violation of the preemptive or similar rights of any security holder of the Bank arising by operation of law, or under the charter, certificate of incorporation, bylaws or other organizational documents (collectively, "**Governing Documents**") of the Company or the Bank (or under any agreement to which the Company or the Bank is a party. The only Subsidiaries of the Company are those listed on Schedule D hereto. Except for the Subsidiaries, the Company does not own beneficially, directly or indirectly, more than five percent (5%) of any class of equity securities or similar interests in any corporation, business trust, association or similar organization, and is not, directly or indirectly, a partner in any partnership or party to any joint venture.

(xi) Capitalization. The authorized, issued and outstanding capital stock of the Company and consolidated long-term debt (i.e. a maturity greater than one year) as of June 30, 2021 is as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus in the column entitled “Actual” under the caption “Capitalization” except for subsequent issuances, if any, pursuant to (a) this Agreement, (b) reservations, agreements or employee benefit plans referred to in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (c) repurchases of capital stock pursuant to publicly announced stock repurchase authorizations disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus and/or (d) the exercise of convertible securities or options referred to in the Registration Statement, the Pricing Disclosure Package and the Prospectus. The shares of issued and outstanding capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable; none of the outstanding shares of capital stock of the Company was issued in violation of the preemptive rights, rights of first refusal or other similar rights of any security holder of the Company arising by operation of law, or under the Governing Documents of the Company or under any agreement to which the Company is a party. There have been no long-term borrowings by the Company or its consolidated Subsidiaries since such date.

(xii) Authorization of Agreement. The Company has the corporate right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the consummation by it of the transactions contemplated hereby has been duly and validly taken. This Agreement has been duly authorized, executed and delivered by the Company.

(xiii) Securities Offerings. All offers and sales of the Company’s capital stock and debt or other securities prior to the date hereof were made in compliance with or were the subject of an available exemption from the Securities Act and the Securities Act Regulations and all other applicable state and federal laws or regulations, or any actions under the Securities Act and the Securities Act Regulations or any such applicable state or federal laws or regulations in respect of any such offers or sales are effectively barred by effective waivers or statutes of limitation.

(xiv) Authorization, Validity and Enforceability of Indenture and Securities. The Indenture will be duly authorized, executed and delivered by the Company and, assuming the due authorization, execution and delivery of the Indenture by the Trustee, the Indenture will constitute a valid, legal and binding agreement of the Company enforceable against the Company in accordance with its terms, except to the extent that enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws now or hereafter in effect relating to creditors' rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity). The Indenture has been, and at the Closing Time will be, duly qualified under the Trust Indenture Act. The Securities to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale to the Underwriters pursuant to this Agreement and, at Closing, will have been duly executed by the Company, and when authenticated and delivered by the Trustee in the manner provided for in the Indenture, and issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will constitute valid, legal and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws now or hereafter in effect relating to creditors' rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity). The Securities will be in the form contemplated by, and will be entitled to the benefits of, the Indenture. The description of the Indenture contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus conforms in all material respects to the Indenture.

(xv) Registration Rights. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no contracts, agreements or understandings granting any person registration rights or other similar rights to have any securities registered for resale pursuant to the Registration Statement or otherwise registered for resale or sold by the Company under the Securities Act by reason of filing of the Registration Statement with the Commission or by reason of the sale of the Securities by the Company pursuant to this Agreement.

(xvi) Summaries of Legal Matters. The statements set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus under the captions "Material U.S. Federal Income Tax Considerations" and "Certain ERISA Considerations" and under the captions "Supervision and Regulation" and "Legal Proceedings" in the Company's Annual Report on Form 10-K for the year ended December 31, 2020, insofar as they purport to describe legal matters or provisions of the laws and regulations or documents referred to therein, fairly present and summarize in all material respects such matters or provisions; and the statements set forth in the Pricing Disclosure Package and the Prospectus under the caption "Material U.S. Federal Income Tax Consequences", insofar as they purport to summarize certain federal income tax laws of the United States, fairly present and summarize in all material respects such laws.

(xvii) Absence of Defaults and Conflicts. Neither the Company nor the Bank is in violation of its Governing Documents, and neither the Company nor the Bank is in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or the Bank is a party or by which the Company or the Bank is bound, or to which any of the property or assets of the Company or the Bank is subject (collectively, “**Agreements and Instruments**”), or in violation of any applicable law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority having jurisdiction over the Company or the Bank or any of their respective assets, properties or operations, except for such violations or defaults that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect; and the execution, delivery and performance of this Agreement and the Indenture and the consummation of the transactions contemplated herein and therein, and in the Registration Statement (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described in the Prospectus under the caption “Use of Proceeds”) and compliance by the Company with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or the Bank pursuant to, the Agreements and Instruments (except for such conflicts, breaches or defaults or liens, charges or encumbrances that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect); nor will such action result in any violation of the provisions of the Governing Documents of the Company or the Bank; nor will such action result in any violation of any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or the Bank or any of their respective assets, properties or operations (except for such violations that would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect). As used herein, a “**Repayment Event**” means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or the Bank.

(xviii) Nasdaq Compliance. The Company is in compliance in all material respects with the requirements of The Nasdaq Global Market (“**Nasdaq**”) for continued listing of the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”), thereon. The Company has taken no action designed to, or that would reasonably be expected to have the effect of, terminating the registration of the Common Stock under the Exchange Act or the listing of the Common Stock on Nasdaq, nor has the Company received any written notification that the Commission or Nasdaq is contemplating terminating such registration or listing. The transactions contemplated by this Agreement will not contravene the rules or regulations of Nasdaq.

(xix) Absence of Labor Dispute. No material labor dispute with the employees of the Company or the Bank exists or, to the knowledge of the Company, is imminent. The Company is not aware of any existing or imminent labor disturbance by the employees of any of its or the Bank's principal suppliers, vendors, customers or contractors, which, in either case, would, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Except for matters which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, neither the Company nor the Bank is engaged in any unfair labor practice. Except for matters which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except as disclosed in the Registration Statement, the Pricing Disclosure Package or the Prospectus, (A) there is (1) no unfair labor practice complaint pending or, to the Company's knowledge, threatened against the Company or the Bank before the National Labor Relations Board or any similar domestic or foreign body, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending or, to the Company's knowledge, threatened, (2) no strike, labor dispute, slowdown or stoppage pending or, to the Company's knowledge, threatened against the Company or the Bank and (3) no union representation dispute currently existing concerning the employees of the Company or the Bank, (B) to the Company's knowledge, no union organizing activities are currently taking place concerning the employees of the Company or the Bank and (C) there has been no violation of any applicable federal, state, local or foreign law relating to discrimination in the hiring, promotion or pay of employees, any applicable wage or hour laws or any provision of the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "ERISA"), or any similar applicable domestic or foreign law or the rules and regulations promulgated thereunder concerning the employees of the Company or the Bank. Notwithstanding the foregoing, the Company acknowledges that it is party to (i) a Collective Bargaining Agreement with OPEIU, Local 153, AFL-CIO, dated March 9, 2020 (filed as Exhibit 10.5 to the Company's Annual Report on Form 10-K, filed with the SEC on March 15, 2021) and (ii) an Independent Office Agreement with Local 32BJ SEIU, effective as of January 1, 2016 (filed as Exhibit 10.6 to the Company's Annual Report on Form 10-K, filed with the SEC on March 15, 2021).

(xx) Absence of Proceedings. There is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against the Company or the Bank, which is required to be disclosed in the Registration Statement, the Pricing Disclosure Package or the Prospectus (other than as disclosed therein), or which, if determined adversely to the Company or the Bank, individually or in the aggregate, would reasonably be likely to result in a Material Adverse Effect, or which would materially and adversely affect the properties or assets thereof, nor, to the Company's knowledge, is there any basis for any such action, suit, inquiry, proceeding or investigation. The aggregate of all pending legal or governmental proceedings to which the Company or the Bank is a party or of which any of their respective properties or assets is the subject which are not described in the Registration Statement, the Pricing Disclosure Package or the Prospectus, including ordinary routine litigation incidental to the business of the Company and the Bank, if determined adversely to the Company or the Bank, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(xxi) Bank Holding Company Act. The Company has been duly registered as, and meets in all material respects the applicable requirements for qualification as, a bank holding company and has elected to be treated as a bank holding company under the applicable provisions of the Bank Holding Company Act of 1956, as amended. The activities of the Bank are permitted of a subsidiary of a financial holding company under applicable law and the rules and regulations of the Federal Reserve set forth in Title 12 of the Code of Federal Regulations.

(xxii) Compliance with Bank Regulatory Authorities. The Company and the Bank are in compliance in all material respects with all applicable laws, rules and regulations (including, without limitation, all applicable regulations and orders) of, or agreements with, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau (the “CFPB”) and the New York State Department of Financial Services, as applicable (collectively, the “Bank Regulatory Authorities”), the Equal Credit Opportunity Act, the Fair Housing Act, the Truth in Lending Act, the Community Reinvestment Act (the “CRA”), the Home Mortgage Disclosure Act, the Bank Secrecy Act and Title III of the USA Patriot Act, to the extent such laws or regulations apply to the Company or the Bank, as applicable. The Company and the Bank have no knowledge of any facts and circumstances, and have no reason to believe that any facts or circumstances exist, that could cause the Bank (A) to be deemed not to be in satisfactory compliance with the CRA and the regulations promulgated thereunder or to be assigned a CRA rating by federal or state banking regulators of lower than “satisfactory,” or (B) to be deemed to be operating in violation, in any material respect, of the Bank Secrecy Act of 1970 as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (or otherwise known as the “Currency and Foreign Transactions Reporting Act”), the USA Patriot Act (or otherwise known as “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001”) or any order issued with respect to the Anti-Money Laundering Laws (as defined below). As of September 30, 2021, each of the Company and the Bank met or exceeded the standards necessary to be considered “well capitalized” under the FDIC’s regulatory framework for prompt corrective action. The Bank has a Community Reinvestment Act rating of at least “Satisfactory.” The Bank has been duly chartered, is validly existing under the laws of the State of New York and holds the requisite authority to do business as a state-chartered bank with banking powers under the laws of the State of New York. The Bank is the only depository institution subsidiary of the Company and the Bank is a member in good standing of the Federal Home Loan Bank System. The activities of the Bank are permitted under the applicable laws and regulations of the State of New York. Since December 31, 2018, each of the Company and the Bank have filed all material reports, registrations and statements, together with any required amendments thereto, that it was required to file with the Bank Regulatory Authorities. All such reports and statements filed with any such Bank Regulatory Authority are collectively referred to herein as the “Company Reports.” As of their respective dates, the Company Reports complied as to form in all material respects with all applicable rules and regulations promulgated by the Bank Regulatory Authorities, as the case may be. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, neither the Company nor the Bank is a party or subject to any formal or informal agreement, memorandum of understanding, consent decree, directive, cease-and-desist order, order of prohibition or suspension, written commitment, supervisory agreement or other written statement as described under 12 U.S.C. 1818(u) with, or order issued by, or has adopted any board resolutions at the request of, any Bank Regulatory Authority that restricts in any material respect the conduct of its business, or that relates to its capital adequacy, its credit policies or its management in any material respect, nor have any of them been advised in writing by any Bank Regulatory Authority that it is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, decree, agreement, memorandum of understanding, extraordinary supervisory letter, commitment letter or similar submission, or any such board resolutions or that imposes any restrictions or requirements not generally applicable to bank holding companies or commercial banks. There is no unresolved violation, criticism or exception by any Bank Regulatory Authority with respect to any examination of the Company, the Bank or any of the Company’s other Subsidiaries, which would reasonably be expected to result in a Material Adverse Effect.



(xxiii) Accuracy of Exhibits. There are no contracts or documents which are required to be described in the Registration Statement, the Pricing Disclosure Package, the Prospectus or the documents incorporated by reference therein or to be filed as exhibits thereto which have not been so described and filed as required.

(xxiv) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental agency or body is necessary or required for the performance by the Company of its obligations under this Agreement in connection with the offering, issuance or sale of the Securities or the consummation of the transactions contemplated in this Agreement prior to the Closing Time, except such as have been already obtained or as may be required under the Securities Act, the Securities Act Regulations, the rules of Nasdaq, the securities laws of any state or non-U.S. jurisdiction or the rules of the Financial Industry Regulatory Authority, Inc. (“**FINRA**”).

(xxv) Possession of Licenses and Permits. The Company and the Bank possess such permits, licenses, approvals, registrations, memberships, consents and other authorizations (collectively, “**Governmental Licenses**”) issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the business now operated by them, except where the failure to possess any such Governmental Licenses would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect; the Company and the Bank are in compliance with the terms and conditions of all such Governmental Licenses, except where the failure to so comply would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect and, to the knowledge of the Company, no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination of any such Governmental License or result in any other material impairment of the rights of any such Governmental License; all of the Governmental Licenses are valid and in full force and effect except where the failure to be so would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect; and neither the Company nor the Bank has received any written notice of proceedings relating to the revocation or modification of any such Governmental Licenses except for such revocation or modifications that would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect. Excluding Company Reports filed with Bank Regulatory Authorities as provided in Section 1(a)(xxii), neither the Company nor the Bank has failed to file with applicable regulatory authorities any statement, report, information or form required by any applicable law, regulation or order, all such filings were in compliance with applicable laws when filed and no deficiencies have been asserted by any regulatory commission, agency or authority with respect to any such filings or submissions, except where the failure to so file or comply, or any such asserted deficiencies, would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(xxvi) Title to Property. The Company and the Bank have good and marketable title in fee simple to all real property owned by the Company and the Bank and good title to all other properties owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (A) are described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or (B) do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or the Bank. All of the real property leases and subleases material to the business of the Company and the Bank and under which the Company or the Bank occupies real property or otherwise has or exercises rights with respect to such real property described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, are in full force and effect and are held under valid, subsisting and enforceable leases, and neither the Company nor the Bank has received any written notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or the Bank under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such Subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease.

(xxvii) Possession of Intellectual Property. The Company and the Bank own or possess, or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures and excluding generally commercially available “off the shelf” software programs licensed pursuant to shrink wrap or “click and accept” licenses), systems, technology, trademarks, service marks, trade names or other intellectual property (collectively, “**Intellectual Property**”) necessary to carry on the business now operated by them, except as would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor the Bank has received any written notice or is otherwise aware of any infringement or misappropriation of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would reasonably be likely to render any Intellectual Property invalid or inadequate to protect the interest of the Company or the Bank therein and which infringement, misappropriation or conflict, if the subject of an unfavorable decision, ruling or finding, or invalidity or inadequacy would, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(xxviii) Environmental Laws. Except as described in the Registration Statement and except as would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (A) neither the Company nor the Bank is in violation of any applicable federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "**Hazardous Materials**") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "**Environmental Laws**"), (B) the Company and the Bank have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) there are no pending or, to the knowledge of the Company, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or the Bank, (D) there are no events or, to the knowledge of the Company, circumstances that would reasonably be expected to result in forming the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against the Company or the Bank relating to Hazardous Materials or any Environmental Laws, and (E) neither the Company nor the Bank anticipate material capital expenditures relating to Environmental Laws.

(xxix) ERISA. Each employee benefit plan, within the meaning of Section 3(3) of ERISA, that is maintained, administered or contributed to by the Company, the Bank or any member of the Company's "control group" (within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "**Code**") for employees or former employees of the Company and its affiliates ("**Plan**") has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Code. No "prohibited transaction," within the meaning of Section 406 of ERISA or Section 4975 of the Code has occurred with respect to any such Plan excluding transactions effected pursuant to a statutory or administrative exemption. No "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company, the Bank or any of their ERISA Affiliates. Except as disclosed in the Registration Statement, the Pricing Disclosure Package or the Prospectus, no "employee benefit plan" (as defined under ERISA) established or maintained by the Company, the Bank or any of their ERISA Affiliates, if such employee benefit plan were terminated, would reasonably be expected to have any "amount of unfunded benefit liabilities" (as defined under ERISA). None of the Company, the Bank or any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (A) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan," or (B) Sections 412, 4971, 4975 or 4980B of the Code. Each employee benefit plan established or maintained by the Company, the Bank or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and no events have occurred, whether by action or failure to act, which would reasonably be expected to cause the loss of such qualification. With respect to each Plan subject to Title IV of ERISA, the minimum funding standard of Section 302 of ERISA or Section 412 of the Code, as applicable, has been satisfied and is reasonably expected to be satisfied in the future and the fair market value of the assets under each Plan exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan). There is no pending audit or investigation by the Internal Revenue Service, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any other governmental agency or any foreign agency.

(xxx) Internal Control Over Financial Reporting. The Company and the Bank maintain a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act Regulations) that complies in all material respects with the requirements of the Exchange Act and the Exchange Act Regulations and has been designed by, or under the supervision of, the Company's principal executive officer and principal financial officer, or persons performing similar functions, and is sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including that (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (C) access to assets is permitted only in accordance with management's general or specific authorization; (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (E) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement is accurate and fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto. The systems of internal control over financial reporting of the Company and the Bank are overseen by the Audit Committee of the Board of Directors of the Company in accordance with Nasdaq rules and regulations. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, since the end of the Company's most recent audited fiscal year, (i) there has been no material weakness in the Company's internal control over financial reporting (whether or not remediated), and (ii) there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company's auditors and the Audit Committee of the Board of Directors of the Company have not been advised of (a) any significant deficiencies in the design or operation of internal controls that would be reasonably likely to adversely affect the ability of the Company or the Bank to record, process, summarize and report financial data, or any material weakness in internal controls, or (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and the Bank.

(xxxi) Disclosure Controls and Procedures. The Company and the Bank employ disclosure controls and procedures (as such term is defined in Rule 13a-15 of the Exchange Act Regulations), which (A) are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms and that material information relating to the Company and the Bank is made known to the Company's principal executive officer and principal financial officer by others within the Company and the Bank to allow timely decisions regarding disclosure, (B) have been evaluated by management of the Company for effectiveness as of the end of the Company's most recent fiscal quarter, and (C) were then effective in all material respects to perform the functions for which they were established. Based on the evaluation of the Company's and the Bank's disclosure controls and procedures described above, the Company is not aware of (1) any significant deficiency in the design or operation of internal controls which could adversely affect the Company's or the Bank's ability to record, process, summarize and report financial data or any material weakness in internal controls or (2) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's or the Bank's internal controls. Since the date of the most recent evaluation of the Company's disclosure controls and procedures described above, there have been no significant changes in internal controls or in other factors that would be reasonably be likely to significantly affect internal controls. Within the next 90 days, the Company does not reasonably expect to publicly disclose or report to the Audit Committee or the Board of Directors a material weakness, change in internal control over financial reporting or fraud involving management or other employees who have a significant role in internal control over financial reporting, any violation of, or failure to comply with, the Sarbanes-Oxley Act or the Exchange Act, or any matter related to internal control over financial reporting which, if determined adversely, would result in a Material Adverse Effect.

(xxxii) Compliance with the Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxxiii) Pending Procedures and Examinations. The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the Securities Act, and the Company is not the subject of a pending proceeding under Section 8A of the Securities Act in connection with the offering of the Securities.

(xxxiv) Payment of Taxes. All United States federal income tax returns of the Company and the Bank required by applicable law to be filed have been timely filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which have been or will be promptly contested in good faith and as to which adequate reserves have been provided in the Company's financial statements in accordance with GAAP. The Company and the Bank have filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law, except insofar as the failure to file such returns, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, and have paid all taxes due pursuant to such returns or pursuant to any written assessment received by the Company or the Bank except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. The charges, accruals and reserves on the books of the Company and the Bank in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not, singly or in the aggregate, result in a Material Adverse Effect. Except as otherwise disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there is no tax deficiency that has been or would reasonably be expected to be asserted against the Company or the Bank or any of their respective properties or assets.

(xxxv) Insurance. The Company and the Bank are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged including, but not limited to, policies covering real and personal property owned or leased by the Company and the Bank against theft, damage, destruction, acts of vandalism and earthquakes; neither the Company nor the Bank has been refused any insurance coverage sought or applied for; and the Company has no reason to believe that it or the Bank will not be able to renew their existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect. All such insurance is fully in force as of the date hereof.

(xxxvi) Investment Company Act. The Company is not, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus will not be, an “investment company” or an entity “controlled” by an “investment company” as such terms are defined in the Investment Company Act of 1940, as amended (the “**Investment Company Act**”).

(xxxvii) Absence of Manipulation. None of the Company, the Bank or, to the knowledge of the Company, any affiliates of the Company or the Bank, has taken, directly, or indirectly any action designed to cause or result in, or which constitutes or would reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company or any “reference security” (as defined in Rule 100 of Regulation M under the Exchange Act) to facilitate the sale or resale of the Securities or otherwise, and has taken no action which would directly or indirectly violate Regulation M under the Exchange Act in respect of the offering of the Securities.

(xxxviii) Foreign Corrupt Practices Act. None of (A) the Company, (B) the Bank or, (C) to the knowledge of the Company, (1) any other subsidiary of the Company, (2) any director, officer, agent or employee of the Company or any of its subsidiaries, (3) any of the respective affiliates of the Company or any of its subsidiaries or (4) any other person associated with or acting on behalf of the Company or the Bank or their respective affiliates has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (b) made or taken an act in furtherance of an offer, payment, promise or authorization of any direct or indirect unlawful payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any foreign or domestic government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for public office) from corporate funds; (c) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended (the “**FCPA**”), or any applicable law or regulations implementing the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offense under the Bribery Act 2010 of the United Kingdom, or any other applicable anti-bribery or anti-corruption statute or regulation; or (d) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment or benefit in violation of any applicable law, rule or regulation. The Company, its subsidiaries and, to the knowledge of the Company, their respective affiliates have conducted their businesses in compliance in all material respects with the FCPA and all other applicable anti-bribery and anti-corruption laws and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure continued compliance therewith.

(xxxix) Anti-Money Laundering Laws. The operations of the Company, the Bank and, to the knowledge of the Company, the Company’s other subsidiaries, and each the respective affiliates of the foregoing, are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, and the applicable anti-money laundering statutes of all jurisdictions where the Company and its subsidiaries and their respective affiliates conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency or body (collectively, the “**Anti-Money Laundering Laws**”); and no action, suit or proceeding by or before any court, governmental agency or body involving the Company, the Bank, or, to the Company’s knowledge any other subsidiary with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened. The Company and any of its subsidiaries and, to the knowledge of the Company, their respective affiliates, have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws.

(xl) OFAC. None of the Company, the Bank, or, to the Company's knowledge, any other subsidiary or any officer or director of either the Company or any of its subsidiaries, nor, to the knowledge of the Company, after due inquiry, any agent, employee, affiliate or person acting on behalf of the Company or any of its subsidiaries is or has been (A) engaged in any services (including financial services), transfers of goods, software, or technology, or any other business activity related to (i) Cuba, Iran, North Korea, Sudan, Syria, the Crimea region of Ukraine claimed by Russia or any other country or territory that is, or whose government is, the subject of sanctions that broadly prohibit dealings with that country or territory (collectively, "**Sanctioned Countries**" and each, a "**Sanctioned Country**"), (ii) the government of any Sanctioned Country, (iii) any person, entity or organization located in, resident in, formed under the laws of, or owned or controlled by the government of, any Sanctioned Country, or (iv) any person, entity or organization made subject of any sanctions administered or enforced by the United States Government, including, without limitation, the list of Specially Designated Nationals ("**SDN List**") of the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**"), or by the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**") and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any Subsidiary, or any joint venture partner or other person or entity, for the purpose of financing the activities of or business with any person, or in any country or territory, that currently is the subject to any U.S. sanctions administered by OFAC or in any other manner that, to the knowledge of the Company, will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of U.S. sanctions administered by OFAC; (B) engaged in any transfers of goods, technologies or services (including financial services) that may assist the governments of Sanctioned Countries or facilitate money laundering or other activities proscribed by United States laws, rules or regulations; (C) is a person, entity or organization currently the subject of any Sanctions; or (D) located, organized or resident in any Sanctioned Country.

(xli) Relationship. No relationship, direct or indirect, exists between or among the Company or the Bank, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or the Bank, on the other, that is required by the Securities Act or Securities Act Regulations to be described in the Registration Statement and/or the Prospectus and that is not so described.

(xlii) Lending Relationship. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company (A) does not have any material lending or other relationship with any bank or lending affiliate of any Underwriter and (B) does not intend to use any of the proceeds from the sale of the Securities to repay any outstanding debt owed to any affiliate of any Underwriter.

(xliii) No Restrictions on Subsidiaries. Except in each case as otherwise disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Bank is not currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or is subject, from paying any dividends to the Company, from making any other distribution on the Bank's capital stock, from repaying to the Company any loans or advances to the Bank from the Company or from transferring any of the Bank's properties or assets to the Company or any other Subsidiary of the Company.

(xliv) Statistical and Market-Related Data. The statistical and market-related data contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus comply in all material respects with the requirements of Commission Industry Guide 3 (where applicable) and are based on or derived from sources which the Company believes are reliable and accurate, and the Company has obtained the written consent to the use of such data from such sources to the extent required.



(xlv) Distribution of Offering Material By the Company. The Company has not distributed and will not distribute, prior to the later of the Closing Time and the completion of the Underwriters' distribution of the Securities, any offering material in connection with the offering and sale of the Securities other than the Registration Statement, the preliminary prospectus contained in the Pricing Disclosure Package, the Prospectus, any Issuer Free Writing Prospectus reviewed and consented to by the Representative and included in Schedule B hereto or any electronic road show or other written communications reviewed and consented to by the Representative and listed on Schedule B hereto (each a, "**Company Additional Written Communication**"). Each such Company Additional Written Communication, when taken together with the Pricing Disclosure Package, did not, and at the Closing Time will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Company Additional Written Communication based upon and in conformity with written information furnished to the Company by any Underwriter through the Representative specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter through the Representative consists of the Underwriter Information.

(xlvi) Forward-Looking Statements. Each financial or operational projection or other "forward-looking statement" (as defined by Section 27A of the Securities Act or Section 21E of the Exchange Act) contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus (A) was so included by the Company in good faith and with reasonable basis after due consideration by the Company of the underlying assumptions, estimates and other applicable facts and circumstances, and (B) is accompanied by meaningful cautionary statements identifying those factors that could cause actual results to differ materially from those in such forward-looking statement. No such statement was made with the knowledge of an executive officer or director of the Company that it was false or misleading.

(xlvii) No Fees or Advisory Rights. Other than as contemplated by this Agreement, there is no broker, finder or other party that is entitled to receive from the Company or the Bank any brokerage or finder's fee or any other fee, commission or payment as a result of the transactions contemplated by this Agreement. No person has the right to act as a financial advisor to the Company in connection with the offer and sale of the Securities.

(xlviii) Deposit Insurance. The deposit accounts of the Bank are insured by the FDIC up to applicable legal limits, the Bank has paid all premiums and assessments required by the FDIC and the regulations thereunder, and no proceeding for the termination or revocation of such insurance is pending or, to the knowledge of the Company, threatened.

(xlix) Derivative Instruments. Any and all material swaps, caps, floors, futures, forward contracts, option agreements (other than options issued under the Company's stockholder-approved benefit plans) and other derivative financial instruments, contracts or arrangements, whether entered into for the account of the Company or the Bank or for the account of a customer of the Company or of the Bank, were entered into in the ordinary course of business and in compliance in all material respects with applicable laws, rules, regulations and policies of all applicable regulatory agencies and with counterparties believed by the Company to be financially responsible. The Company and the Bank have duly performed in all material respects all of their obligations with respect to all such derivative financial instruments, contracts and arrangements thereunder to the extent that such obligations to perform have accrued, and there are no breaches, violations or defaults or allegations or assertions of such by any party thereunder except as would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Termination of Contracts. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, neither the Company nor the Bank has sent or received any written communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in the Pricing Disclosure Package and Prospectus, or referred to or described in, or filed as an exhibit to, the Pricing Disclosure Package and Prospectus, and no such termination or non-renewal has been threatened by the Company or the Bank or, to the Company's knowledge, any other party to any such contract or agreement.

(li) Off-Balance Sheet Transactions. There is no transaction, arrangement or other relationship between the Company or the Bank and an unconsolidated or other off-balance sheet entity which is required to be disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus (other than as disclosed therein).

(lii) Margin Rules. The application of the proceeds received by the Company from the issuance, sale and delivery of the Securities as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus will not violate Regulation T, U or X of the Federal Reserve or any other regulation of the Federal Reserve applicable to the Company.

(liii) Cybersecurity. (A) There has been no security breach or incident, unauthorized access or disclosure, or other compromise of or relating to any of the Company's or the Bank's information technology and computer systems, networks, hardware, software, data and databases (including the data and information of their respective customers, employees, suppliers, vendors and any third party data maintained, processed or stored by the Company and the Bank, and, to the knowledge of the Company, any such data processed or stored by third parties on behalf of the Company and the Bank, equipment or technology (collectively, "**IT Systems and Data**") that would, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect; (B) neither the Company nor the Bank have been notified in writing of, and each of them have no knowledge of any event or condition that would result in, any security breach or incident, unauthorized access or disclosure or other compromise to their IT Systems and Data that would, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (C) the Company and the Bank have implemented commercially reasonable controls, policies, procedures, and technological safeguards designed to maintain and protect the integrity, continuous operation, redundancy and security of their IT Systems and Data reasonably consistent with industry standards and practices, or as required by applicable regulatory standards. The Company and its Subsidiaries are presently in compliance in all material respects with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification.

(liv) Experienced Issuer. The Company is an “experienced issuer” within the meaning of FINRA Rule 5110(h)(1)(C) and (j)(6).

(b) Officer’s Certificates. Any certificate signed by any officer of the Company delivered to the Representative or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

**SECTION 2.** Sale and Delivery to Underwriters; Closing.

(a) Sale of Securities. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, the aggregate principal amount of Securities set forth in Schedule A opposite the name of such Underwriter, at a purchase price equal to 98.625% of the aggregate principal amount thereof.

(b) Payment. Payment of the purchase price for, and delivery of the Securities shall be made at the offices of Squire Patton Boggs (US) LLP, 1211 Sixth Avenue, 26<sup>th</sup> Floor, New York, NY 10036, or at such other place as shall be agreed upon by the Representative and the Company, at 9:00 a.m. (New York City time) on November, 8, 2021 (unless postponed in accordance with the provisions of Section 11), or such other time not later than 10 business days after such date as shall be agreed upon by the Representative and the Company (such time and date of payment and delivery being herein called “**Closing Time**”).

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company against delivery of the Securities (in the form of one or more global notes), through the facilities of The Depository Trust Company (“**DTC**”), to the Representative for the respective accounts of the Underwriters. It is understood that each Underwriter has authorized the Representative, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Securities which it has agreed to purchase. The Representative, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Securities to be purchased by any Underwriter whose funds have not been received by the Closing Time, but such payment shall not relieve such Underwriter from its obligations hereunder.

**SECTION 3.**     Covenants of the Company. The Company covenants with each Underwriter as follows:

(a)     *Compliance with Commission Requests.* Prior to the completion of the distribution of the Securities as contemplated in this Agreement, the Company, subject to Section 3(b) hereof will comply with the requirements of Rule 430B of the Securities Act Regulations, and will notify the Representative immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement or any new registration statement relating to the Securities shall become effective or any amendment or supplement to the Pricing Disclosure Package or the Prospectus shall have been used or filed, as the case may be, including any document incorporated by reference therein, in each case only as permitted by Section 3 hereof, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Pricing Disclosure Package or the Prospectus, including any document incorporated by reference therein, or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or any notice of objection to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) or of the issuance of any order preventing or suspending the use of any preliminary prospectus or the Prospectus or any amendment or supplement thereto, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the Securities Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the Securities Act in connection with the offering of the Securities. The Company will effect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. Until the completion of the distribution of the Securities as contemplated in this Agreement, the Company will use its best efforts to prevent the issuance of any stop, prevention or suspension order and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment. If, before all the Securities have been sold by the Underwriters, the Company receives from the Commission a notice pursuant to Rule 401(g)(2) or otherwise ceases to be eligible to use the shelf registration statement form, the Company will (A) promptly notify the Underwriters, (B) promptly file a new registration statement or post-effective amendment on the proper form relating to the Securities in such form as is reasonably satisfactory to the Underwriters, (C) use its best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable, and (D) promptly notify the Underwriters of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Securities to continue as contemplated in the registration statement that was the subject of the Rule 401(g)(2) notice or for which the Company has otherwise become ineligible. References herein to the Registration Statement shall include such new registration statement or post-effective amendment, as the case may be.

(b)     *Payment of Filing Fees.* If the Company elects to rely upon Rule 462(b), the Company will file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) by 10:00 p.m., New York City time, on the date of this Agreement, and at the time of filing either to pay to the Commission the filing fee for the Rule 462(b) Registration Statement or to give irrevocable instructions for the payment of such fee pursuant to Rule 111 under the Securities Act.

(c) *Continued Compliance with Securities Laws.* The Company will comply with the Securities Act, the Securities Act Regulations, the Exchange Act and the Exchange Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Registration Statement, the Pricing Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172 of the Securities Act Regulations, would be) required by the Securities Act (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act Regulations) to be delivered in connection with sales of the Securities ending no later than nine months from the date hereof (the “**Delivery Period**”) any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the Pricing Disclosure Package or the Prospectus in order that the Pricing Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act Regulations) is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the Pricing Disclosure Package or the Prospectus, as the case may be, including, without limitation, any document incorporated therein by reference, in order to comply with the requirements of the Securities Act, the Securities Act Regulations, the Exchange Act or the Exchange Act Regulations, the Company will promptly (A) give the Representative written notice of such event or condition, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the Pricing Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Representative with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement and use its best efforts to have any amendment to the Registration Statement declared effective by the Commission as soon as possible, provided that the Company shall not file or use any such amendment or supplement to which the Representative or counsel for the Underwriters shall reasonably object.

(d) *Filing or Use of Amendments or Supplements.* During the Delivery Period, the Company (A) will furnish to the Representative for review, a reasonable period of time prior to the proposed time of filing of any proposed amendment or supplement to the Registration Statement, a copy of each such amendment or supplement, and (B) will not amend or supplement the Registration Statement without the Representative’s prior written consent, which consent shall not be unreasonably withheld. Prior to amending or supplementing any preliminary prospectus or the Prospectus, the Company shall furnish to the Representative for review, a reasonable amount of time prior to the time of filing or use of the proposed amendment or supplement, a copy of each such proposed amendment or supplement. The Company shall not file or use any such proposed amendment or supplement without the Representative’s prior written consent, which consent shall not be unreasonably withheld.

(e) *Delivery of Registration Statements.* The Company has furnished or will deliver to the Representative and counsel for the Underwriters, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) and signed copies of all consents and certificates of experts, and will also deliver to the Representative, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The signed copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(f) *Delivery of Prospectuses.* The Company has delivered to each Underwriter, without charge, electronic copies of each preliminary prospectus, and the Company hereby consents to the use of such electronic copies for purposes permitted by the Securities Act. The Company will furnish to each Underwriter, without charge, during the Delivery Period, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(g) *Blue Sky Qualifications.* The Company will take such actions as the Representative reasonably requests to qualify (or obtain exemptions from qualification) the Securities for offering and sale under the applicable securities laws of such states and non-U.S. jurisdictions as the Representative may designate and to maintain such qualifications in effect during the Delivery Period; provided, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(h) *Earnings Statements.* The Company will timely file such reports pursuant to the Exchange Act as are necessary in order to make generally available to its securityholders as soon as practicable, but in any event not later than 16 months after the effective date of the Registration Statement (as defined in Rule 158(c) of the Securities Act), an earnings statement (satisfying the provisions of Section 11(a) of the Securities Act and the Securities Act Regulations (including Rule 158)).

(i) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Registration Statement, the preliminary prospectus contained in the Pricing Disclosure Package and the Prospectus under "Use of Proceeds."

(j) *Reporting Requirements.* The Company, during the Delivery Period, will file all documents required to be filed with the Commission pursuant to the Exchange Act within the time periods required by, and each such document will comply in all material respects with the requirements of, the Exchange Act and the Exchange Act Regulations.

(k) *Pricing Term Sheet.* The Company will prepare the Term Sheet, containing solely a description of the final terms of the Securities and the offering thereof, and after affording the Representative the opportunity to comment thereon, file the Term Sheet with the Commission pursuant to Rule 433(d) within the time required by such Rule.

(l) *Issuer Free Writing Prospectuses.* The Company agrees that, unless it obtains the prior written consent of the Representative, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus,” or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided, that the Representative will be deemed to have consented to any Issuer General Use Free Writing Prospectuses listed on Schedule B hereto and any “road show that is a written communication” within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representative. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representative as an Issuer Free Writing Prospectus and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus during the Delivery Period there occurred or occurs an event or condition as a result of which such Issuer Free Writing Prospectus included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representative in writing and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to correct such untrue statement or omission.

(m) *Renewal Deadline.* If, immediately prior to the third anniversary of the initial effective date of the Registration Statement (the “**Renewal Deadline**”), any Securities remain unsold by the Underwriters, the Company will, prior to the Renewal Deadline, (i) promptly notify the Representative in writing and (ii) promptly file, if it is eligible to do so, a new shelf registration statement relating to the Securities, in a form and substance satisfactory to the Underwriters. If, at the Renewal Deadline, the Company is not eligible to file a shelf registration statement, the Company will, prior to the Renewal Deadline, (i) promptly notify the Representative in writing, (ii) promptly file a new shelf registration statement or post-effective amendment on the proper form relating to such Securities, in a form and substance satisfactory to the Underwriters, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective within 60 days after the Renewal Deadline and (iv) promptly notify the Representative in writing of such effectiveness. The Company will take all other action necessary or appropriate to permit the offering and sale of the Securities to continue as contemplated in the expired Registration Statement. References herein to the “Registration Statement” shall include such new shelf registration statement or post-effective amendment, as the case may be.

(n) *DTC.* The Company will cooperate with the Underwriters and use its reasonable best efforts to permit the Securities to be eligible for clearance, settlement and trading through the facilities of DTC.

(o) *Investment Company Act.* The Company shall not invest or otherwise use the proceeds received by the Company from its sale of the Securities in such a manner as could require the Company or any of the Subsidiaries to register as an investment company under the Investment Company Act.

(p) *Regulation M.* The Company will not take, and will ensure that no affiliate of the Company will take, directly or indirectly, any action designed to cause or result in or which constitutes or would reasonably be expected to constitute stabilization or manipulation of the price of the Securities or any reference security with respect to the Securities, whether to facilitate the sale or resale of the Securities or otherwise, and the Company will, and shall cause each of its affiliates to, comply with all applicable provisions of Regulation M applicable to the offering of the Securities.

(q) *Trustee, Registrar and Paying Agent.* The Company shall engage and maintain, at its expense, a trustee, registrar and paying agent for the Securities.

(r) *Sarbanes-Oxley Act.* The Company and its Subsidiaries will comply in all material respects with all effective applicable provisions of the Sarbanes-Oxley Act.

(s) *Taxes.* The Company will indemnify and hold harmless the Underwriters against any documentary, stamp, issue or similar tax, including any interest and penalties, on the creation, issue and sale of the Securities and on the execution and delivery of this Agreement. All payments to be made by the Company hereunder shall be made without withholding or deduction for or on account of any present or future taxes, duties or governmental charges whatsoever unless the Company is compelled by law to deduct or withhold such taxes, duties or charges. In that event, the Company shall pay such additional amounts as may be necessary in order that the net amounts received after such withholding or deduction shall equal the amounts that would have been received if no withholding or deduction had been made. Notwithstanding the foregoing, all payments to be made by the Company hereunder will be paid net of any withholding or deduction imposed or required pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code, and no additional amounts will be required to be paid on account of any such withholding or deduction.

(t) *Trademarks.* Upon request of any Underwriter, the Company will furnish, or cause to be furnished, to such Underwriter an electronic version of the Company's trademarks, servicemarks and corporate logo for use on the website, if any, operated by such Underwriter for the purpose of facilitating the on-line offering of the Securities (the "**License**"); provided that the License shall be used solely for the purpose described above, is granted without any fee and may not be assigned or transferred.

(u) *Agreement Not to Offer or Sell Additional Securities.* For a period of thirty (30) calendar days after the date of this Agreement, the Company will not, without the prior written consent of the Representative (which consent may be withheld at the sole discretion of the Representative), directly or indirectly, sell, offer, contract or grant any option to sell, pledge, transfer or establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or otherwise dispose of or transfer, or announce the offering of, or file any registration statement under the Securities Act in respect of, any debt securities of the Company similar to the Securities or securities exchangeable for or convertible into debt securities similar to the Securities (other than as contemplated by this Agreement with respect to the Securities).



**SECTION 4.**     Payment of Expenses.

(a)     *Expenses.* Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, the Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (iii) the preparation, issuance and delivery of the Securities to the Underwriters, including any transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company's counsel, accountants and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(g) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation, printing and delivery to the Underwriters of the Blue Sky Survey and any supplement thereto not to exceed \$5,000 in the aggregate, and the fees and expenses of making the Securities eligible for clearance, settlement and trading through the facilities of DTC, (vi) the fees and expenses of any trustee, registrar or paying agent, including the fees and expenses of the Trustee and the fees and disbursements of counsel for the Trustee in connection with the Indenture and the Securities, (vii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Securities, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and fifty percent (50%) of the cost of aircraft and other transportation chartered in connection with the road show, (viii) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by FINRA, if required, of the terms of the sale of the Securities not to exceed \$5,000 in the aggregate, (ix) expenses associated with the ratings of the Securities, (x) the document production charges and expenses associated with printing this Agreement, (xi) the legal fees and expenses (including fees and disbursements of the counsel for the Underwriters not to exceed \$100,000 in the aggregate, and (xiii) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section 4(a).

(b)     *Termination of Agreement.* If this Agreement is terminated by the Representative in accordance with the provisions of Section 6 or Section 10(a) hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses reasonably incurred by the Underwriters in connection with this Agreement and the offering contemplated hereby, including the reasonable fees and disbursements of counsel for the Underwriters.

**SECTION 5.**        Use of Free Writing Prospectuses by Underwriters. Each Underwriter represents and agrees that, unless it obtains the prior consent of the Company and the Representative, it has not made and will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission.

**SECTION 6.**        Conditions of Underwriters’ Obligations. The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company delivered pursuant to the provisions hereof, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a)        *Effectiveness of Registration Statement, etc.* The Registration Statement was filed by the Company with the Commission and has been declared effective not earlier than three years prior to the date hereof. Each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus shall have been filed as required by Rule 424(b) (without reliance on Rule 424(b)(8)) and Rule 433, as applicable, within the time period prescribed by, and in compliance with, the Securities Act Regulations. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto shall have been issued under the Securities Act or proceedings therefor initiated or threatened by the Commission, no notice of objection to the use of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) has been received by the Company, no order preventing or suspending the use of any preliminary prospectus or the Prospectus or any amendment or supplement thereto has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company’s knowledge, contemplated. The Company has complied with each request (if any) from the Commission for additional information related to the Registration Statement, the Pricing Disclosure Package or the Prospectus.

(b)        *Opinion of Counsel for Company.* At the Closing Time, the Representative shall have received the favorable opinion and disclosure letter, each dated the Closing Time, of Nelson Mullins Riley & Scarborough LLP, counsel for the Company, in form and substance reasonably satisfactory to the Representative, together with signed or reproduced copies of such letters for each of the other Underwriters, in form and substance reasonably satisfactory to the Representative.

(c)        *Opinion of Counsel for Underwriters.* At the Closing Time, the Representative shall have received the favorable opinion, dated the Closing Time, of Squire Patton Boggs (US) LLP, counsel for the Underwriters, in form and substance satisfactory to the Representative, together with signed or reproduced copies of such letter for each of the other Underwriters, and the Company shall have furnished to such counsel such documents as they may reasonably request for the purpose of enabling them to pass upon such matters. In giving such opinion, such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Representative. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and its Subsidiaries and certificates of public officials.

(d) *Officers' Certificate.* At the Closing Time, the Representative shall have received a certificate of the Chief Executive Officer or the President of the Company and of the Chief Financial or Chief Accounting Officer of the Company, dated as of Closing Time, to the effect that (i) there has been no Material Adverse Effect, (ii) the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) the conditions specified in **Error! Reference source not found.** hereof have been satisfied.

(e) *Comfort Letters.* At the time of the execution of this Agreement, the Representative shall have received from each of KPMG and Crowe a letter with respect to the Company, dated such date, in form and substance satisfactory to the Representative, together with signed or reproduced copies of such letter for each of the other Underwriters, confirming that they are a registered public accounting firm and independent registered public accountants as required by the Securities Act and containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and financial information contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(f) *Bring-down Comfort Letter.* At the Closing Time, the Representative shall have received from KPMG and Crowe a letter with respect to the Company, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to Section 6(e) hereof, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(g) *Certificate of the Secretary.* At the Closing Time, the Representative shall have received a certificate executed by the Secretary of the Company, in form and substance reasonably satisfactory to the Representative.

(h) *Certificate of the Chief Financial Officer.* At the Closing Time, the Representative shall have received a certificate executed by the Chief Financial Officer of the Company, in form and substance reasonably satisfactory to the Representative.

(i) *Beneficial Ownership Certificate.* On or before the date of this Agreement, the Representative shall have received a certificate satisfying the beneficial ownership due diligence requirements of the Financial Crimes Enforcement Network from the Company in form and substance reasonably satisfactory to the Representative.

(j) *Other Documents.* The Underwriters shall have received such other documents as they may reasonably request with respect to other matters related to the sale of the Securities.

(k) *Absence of Rating Downgrade.* Subsequent to the execution and delivery of this Agreement and prior to the Closing Time, there shall not have occurred any downgrading, nor shall any notice have been given of (i) any downgrading, (ii) any intended or potential downgrading, or (iii) any review or possible change that does not indicate an improvement, in the rating accorded to the Securities by Kroll Bond Rating Agency, Inc.

(l) *No Objection.* If applicable, FINRA shall have not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements relating to the offering of the Securities.

(m) *No Important Changes.* Since the execution of this Agreement, (i) in the good faith judgment of the Representative, since the respective date hereof or the respective dates of which information is given in the Registration Statement, the Pricing Disclosure Package or the Prospectus, there shall not have occurred any Material Adverse Effect, and (ii) there shall not have been any decrease in or withdrawal of the rating of any debt securities or preferred securities of the Company or any of its Subsidiaries by any “nationally recognized statistical rating organization” (as defined for purposes of Section 3(a)(62) of the Exchange Act) or any notice given of any intended or potential decrease in or withdrawal of any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(n) *Delivery of Prospectus.* The Company shall have complied with the provisions hereof with respect to the furnishing of prospectuses, in electronic or printed format, on the New York business day next succeeding the date of this Agreement.

(o) *No Termination Event.* On or after the date hereof, there shall not have occurred any of the events, circumstances or occurrences set forth in Section 10(a).

(p) *No Legal Impediment to Issuance and/or Sale.* No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Time, prevent the issuance or sale of the Securities by the Company.

(q) *Good Standing.* The Representative shall have received on the date hereof and as of the Closing Time reasonably satisfactory evidence of the good standing of the Company and the Bank in their respective jurisdictions of organization, in each case in writing or any standard form of telecommunication from the appropriate governmental authorities of such jurisdictions.

(r) *Additional Documents.* At the Closing Time, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated shall be in form and substance reasonably satisfactory to the Representative and counsel for the Underwriters.

(s) If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by the Representative by notice to the Company at any time at or prior to Closing Time and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Section 1, Section 6, Section 7, Section 8, Section 9, Section 14, Section 15, Section 16 and Section 17 shall survive any such termination and remain in full force and effect.

**SECTION 7.     Indemnification.**

(a)     *Indemnification of Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter, its affiliates (as such term is defined in Rule 501(b) of the Securities Act Regulations (each, an “**Affiliate**”)), selling agents, officers and directors and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i)     against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus, any Issuer Free Writing Prospectus, any “road show”, the Pricing Disclosure Package or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission in any preliminary prospectus, any Issuer Free Writing Prospectus, the Pricing Disclosure Package or the Prospectus (or any amendment or supplement thereto) of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii)    against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 7(d) hereof) any such settlement is effected with the written consent of the Company;

(iii)   against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Representative), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, or in any preliminary prospectus, any Issuer Free Writing Prospectus, the Pricing Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) *Indemnification of Company, Directors and Officers.* Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 7(a) hereof, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, or in any preliminary prospectus, any Issuer Free Writing Prospectus, the Pricing Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(c) *Actions against Parties; Notification.* Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of the indemnity agreement under this Section 7 or Section 8. In case any such action is brought against any indemnified party and such indemnified party notifies the indemnifying party of the commencement thereof, the indemnifying party may elect to assume the defense thereof, with counsel reasonably satisfactory to the indemnified party, and the indemnified party may employ counsel to participate in the defense of any such action; provided, that the employment of such counsel shall be at the indemnified party's own expense, unless (i) the employment of such counsel has been authorized in writing by the indemnifying party, (ii) the indemnified party has reasonably concluded (based upon advice of counsel to the indemnified party) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, or that a conflict or potential conflict exists (based upon advice of counsel to the indemnified party) between the indemnified party and the indemnifying party that makes it impossible or inadvisable for counsel to the indemnifying party to conduct the defense of both the indemnifying party and the indemnified party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party), or (iii) the indemnifying party has not in fact employed counsel reasonably satisfactory to the indemnified party to assume the defense of such action within a reasonable time after receiving notice of the action, suit or proceeding, in each of which cases the reasonable fees, disbursements and other charges of such counsel will be at the expense of the indemnifying party; provided, further, that in no event shall the indemnifying party be required to pay fees and expenses for more than one firm of attorneys representing indemnified parties unless the defense of one indemnified party is unique or separate from that of another indemnified party subject to the same claim or action. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 7 or Section 8 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement without Consent if Failure to Reimburse.* The indemnified party will not, without the prior written consent of the indemnifying party (which consent shall not be unreasonably withheld, conditioned or delayed) settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 7 or Section 8 hereof; provided, however, notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 7(a)(ii) effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 45 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

**SECTION 8.** Contribution. If the indemnification provided for in Section 7 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement received by the Company, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 8. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 8 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 8, no Underwriter shall be required to contribute any amount in excess of the underwriting discount received by such Underwriter in connection with the Securities underwritten by it and distributed to the public.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' respective obligations to contribute pursuant to this Section 8 are several in proportion to the aggregate principal amount of Securities set forth opposite their respective names in Schedule A hereto and not joint.

For purposes of this Section 8, each person, if any, who controls an Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and each Underwriter's Affiliates, officers, directors and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company.

**SECTION 9.** Representations, Warranties and Agreements to Survive. The indemnity and contribution provisions contained in Section 7 and Section 8, and all representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates, officers, directors and or selling agents, any person controlling any Underwriter or the Company's officers or directors or any person controlling the Company and (ii) delivery of and payment for the Securities.



**SECTION 10.** Termination of Agreement.

(a) *Termination.* The Representative may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time, (i) if there has been, in the good faith judgment of the Representative, since the time of execution of this Agreement or since the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package or the Prospectus, any Material Adverse Effect, (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, including without limitation as a result of terrorist activities, in each case the effect of which is such as to make it, in the judgment of the Representative, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission, or Nasdaq, (iv) if trading generally on the Nasdaq has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental agency or body, (v) if a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or with respect to Clearstream or Euroclear systems in Europe, or (vi) if a general moratorium on commercial banking activities has been declared by either federal or State of New York authorities or if there is a material disruption in commercial banking or securities settlement or clearance services in the United States.

(b) *Liabilities.* If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in **Error! Reference source not found.** 4 hereof, and provided further that Section 1, Section 6, Section 7, Section 8, Section 9, Section 14, Section 15, Section 16 and Section 17 shall survive such termination and remain in full force and effect.

**SECTION 11.** Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at the Closing Time to purchase the Securities which it or they are obligated to purchase under this Agreement (the “**Defaulted Securities**”), the Representative shall have the right, within 36 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representative shall not have completed such arrangements within such 36-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Securities to be purchased at the Closing Time, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the number of Securities to be purchased at the Closing Time, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement, either the Representative or the Company shall have the right to postpone the Closing Time for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the Pricing Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term “Underwriter” includes any person substituted for an Underwriter under this Section 11.

**SECTION 12.** Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Representative care of KBW at 787 Seventh Avenue, 4th Floor, New York, New York 10019, attention of Michael C. Garea, Director, Capital Markets, e-mail: mgarea@kbw.com; and notices to the Company shall be directed to it at 275 Seventh Avenue, New York, New York 10001, attention of Deborah Silodor, Executive Vice President and General Counsel.

**SECTION 13.** No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the initial public offering price of the Securities and any related discounts and commissions, is an arm’s-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering of the Securities and the process leading thereto, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company or any of its Subsidiaries or its stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company in connection with the offering of the Securities or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any of its Subsidiaries on other matters) or any other obligation to the Company in connection with the offering of the Securities except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, financial, regulatory or tax advice in connection with the offering of the Securities and the Company has consulted its own respective legal, accounting, financial, regulatory and tax advisors to the extent it deemed appropriate. The Company waives to the fullest extent permitted by applicable law any claims that it may have against the Underwriters arising from an alleged breach of fiduciary duty in connection with the offering of the Securities.

**SECTION 14.** Parties. This Agreement shall each inure to the benefit of and be binding upon the Underwriters, the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters, the Company and their respective successors and the indemnified parties referred to in Section 7 and Section 8 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters, the Company and their respective successors, and said controlling persons, Affiliates, selling agents, officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

**SECTION 15.** Trial by Jury. Each of the Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

**SECTION 16.** GOVERNING LAW. THIS AGREEMENT, ANY TRANSACTION CONTEMPLATED HEREUNDER AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAWS OF THE STATE OF NEW YORK.

**SECTION 17.** Consent to Jurisdiction. Each of the parties hereto agrees that any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby shall be instituted in (i) the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan or (ii) the courts of the State of New York located in the City and County of New York, Borough of Manhattan (collectively, the “**Specified Courts**”), and irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any Specified Court, as to which such jurisdiction is non-exclusive) of the Specified Courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any suit, action or proceeding brought in any Specified Court. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any Specified Court that any such suit, action or proceeding brought in any Specified Court has been brought in an inconvenient forum.

**SECTION 18.** TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

**SECTION 19.** Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic means shall constitute effective execution and delivery of this Agreement by the parties hereto and may be used in lieu of the original signature pages to this Agreement for all purposes.

**SECTION 20.** Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

**SECTION 21.** Entire Agreement; Amendments. This Agreement constitutes the entire Agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party that the condition is meant to benefit.

**Signature Page Follows**

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters, the Company and the Bank in accordance with its terms.

Very truly yours,

AMALGAMATED FINANCIAL CORP.

/s/ Priscilla Sims Brown

Name: Priscilla Sims Brown

Title: President and Chief Executive Officer

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CONFIRMED AND ACCEPTED,  
as of the date first above written:

KEEFE, BRUYETTE & WOODS, INC.

By: /s/ Victor Sack

\_\_\_\_\_  
Name: Victor Sack

Title: Managing Director

For itself and as Representative of the other Underwriters named in Schedule A hereto.

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**SCHEDULE A**

Name of Underwriter	Aggregate Principal Amount of Securities to be Purchased
Keefe, Bruyette & Woods, Inc.	\$ 76,500,000
Loop Capital Markets LLC	8,500,000
Total	<u>\$ 85,000,000</u>

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## SCHEDULE B

### Issuer Free Writing Prospectuses

Investor Presentation, filed as a Free Writing Prospectus on November 4, 2021.

The Term Sheet set forth in Schedule C, filed as a Free Writing Prospectus on November 4, 2021.

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SCHEDULE C

Term Sheet



\$85,000,000

3.250% Fixed-to-Floating Rate Subordinated Notes due 2031

**TERM SHEET**

**Issuer:** Amalgamated Financial Corp. (the “**Company**”)

**Security:** 3.250% Fixed-to-Floating Rate Subordinated Notes due 2031 (the “**Notes**”)

**Aggregate Principal Amount:** \$85,000,000

**Pricing Date:** November 4, 2021

**Settlement Date:** November 8, 2021 (T + 2)

**Maturity Date (if not previously redeemed):** November 15, 2031

**Interest:** From and including the Settlement Date to, but excluding, November 15, 2026, or the date of earlier redemption (the “**Fixed Rate Period**”) 3.250% per annum, payable semi-annually in arrears. From and including November 15, 2026 to, but excluding, the Maturity Date or the date of earlier redemption (the “**Floating Rate Period**”), a floating rate per annum equal to the Benchmark rate (which is expected to be Three-Month Term SOFR) (each as defined in the preliminary prospectus supplement under “**Description of the Subordinated Notes — Interest**”), plus a spread of 230 basis points for each quarterly interest period during the Floating Rate Period, payable quarterly in arrears; *provided, however*, that if the Benchmark rate is less than zero, the Benchmark rate shall be deemed to be zero.

**Interest Payment Dates:** Fixed Rate Period: May 15 and November 15 of each year, commencing on May 15, 2022. The last interest payment date for the Fixed Rate Period will be November 15, 2026.

Floating Rate Period: February 15, May 15, August 15 and November 15 of each year, commencing on February 15, 2027.

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<b>Record Dates:</b>	1st calendar day of each month of the applicable interest payment date.
<b>Day Count Convention:</b>	Fixed Rate Period: 30/360.  Floating Rate Period: 360-day year and the number of days actually elapsed.
<b>Redemption:</b>	<p>The Company may, at its option, beginning with the interest payment date of November 15, 2026, and on any interest payment date thereafter, redeem the Notes, in whole or in part, from time to time, subject to obtaining the prior approval of the Board of Governors of the Federal Reserve System (the “<b>Federal Reserve Board</b>”) to the extent such approval is then required under the capital adequacy rules of the Federal Reserve Board, at a redemption price equal to 100% of the principal amount of the Notes being redeemed, plus accrued and unpaid interest to, but excluding, the date of redemption.</p> <p>The Company may also redeem the Notes at any time prior to the Maturity Date, including prior to November 15, 2026, in whole, but not in part, subject to obtaining the prior approval of the Federal Reserve Board to the extent such approval is then required under the rules of the Federal Reserve Board, upon the occurrence of a “<b>Tax Event</b>,” a “<b>Tier 2 Capital Event</b>” (each as defined under “<b>Description of Subordinated Notes—Redemption</b>” in the Preliminary Prospectus Supplement), or the Company’s becoming required to register as an investment company pursuant to the Investment Company Act of 1940, as amended, in each case, at a redemption price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest to, but excluding, the date of redemption.</p> <p>The Notes will not be subject to repayment at the option of the holder at any time prior to the Maturity Date.</p>
<b>Denominations:</b>	\$1,000 minimum denominations and \$1,000 integral multiples thereof.
<b>Use of Proceeds:</b>	The Company intends to use the net proceeds of this offering for general corporate purposes, including for funding the cash consideration to be paid in the Company’s acquisition of Amalgamated Investments Company and for ongoing working capital needs.

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<b>Price to Public:</b>	100% of the aggregate principal amount of the Notes
<b>Ranking:</b>	<p>The Notes will be unsecured, subordinated obligations of the Company and:</p> <ul style="list-style-type: none"> <li>· will rank junior in right of payment and upon liquidation to any of the Company’s existing and all future Senior Indebtedness (as defined in the indenture pursuant to which the Notes will be issued and described under “Description of the Subordinated Notes” in the preliminary prospectus supplement);</li> <li>· will rank equal in right of payment and upon our liquidation with any of the Company’s existing and all of its future indebtedness the terms of which provide that such indebtedness ranks equally with the Notes;</li> <li>· will rank senior in right of payment and upon the Company’s liquidation to any of our existing and all future indebtedness the terms of which provide that such indebtedness ranks junior in right of payment to indebtedness such as the Notes; and</li> <li>· will be effectively subordinated to the Company’s existing and all of our future secured indebtedness to the extent of the value of the collateral securing such indebtedness, and structurally subordinated to any of the existing and all of the future indebtedness of the Company’s subsidiaries, including without limitation Amalgamated Bank’s depositors, liabilities to general creditors and liabilities arising in the ordinary course of business or otherwise.</li> </ul> <p>As of June 30, 2021, on a consolidated basis, the Company’s outstanding debt and deposits totaled approximately \$5.9 billion, the entire amount of which was comprised of deposits. In addition, as of June 30, 2021, the Company had no indebtedness that would rank senior to the subordinated notes, no indebtedness that would rank <i>pari passu</i> with the Notes, and no indebtedness that would rank subordinate to the Notes. The subordinated notes will, however, be structurally subordinated to the Company’s deposits. The indenture does not limit the amount of additional indebtedness the Company or its subsidiaries may incur.</p>
<b>CUSIP/ISIN:</b>	022671 AA9 / US022671AA91
<b>Listing:</b>	The Notes will not be listed on any national securities exchange or quoted on any automated quotation system. Currently, there is no public trading market for the Notes.
<b>Sole Book-Running Manager:</b>	Keefe, Bruyette & Woods, <i>A Stifel Company</i>
<b>Co-Manager:</b>	Loop Capital Markets LLC

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The Company has filed a registration statement (File No. 333-260076) (including a prospectus) and a preliminary prospectus supplement, dated November 4, 2021 (the “Preliminary Prospectus Supplement”), with the Securities and Exchange Commission (“SEC”) for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement, the Preliminary Prospectus Supplement, the final prospectus supplement (when available) and other documents the Company has filed with the SEC for more complete information about the Company and this offering. You may get these documents for free by visiting EDGAR on the SEC’s website at [www.sec.gov](http://www.sec.gov). Alternatively, the Company, the underwriters or any dealer participating in the offering will arrange to send you the prospectus and the related Preliminary Prospectus Supplement if you request it by contacting Keefe, Bruyette & Woods, A Stifel Company at 787 Seventh Avenue, Fourth Floor, New York, NY 10019.

Capitalized terms used but not defined in this Pricing Term Sheet have the meanings given to them in the Preliminary Prospectus Supplement. This Pricing Term Sheet is qualified in its entirety by reference to the Preliminary Prospectus Supplement. The information in this Pricing Term Sheet supplements the Preliminary Prospectus Supplement and supersedes the information in the Preliminary Prospectus Supplement to the extent it is inconsistent with the information in the Preliminary Prospectus Supplement. Other information (including other financial information) presented in the Preliminary Prospectus Supplement is deemed to have changed to the extent affected by the information contained herein.

**ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.**

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## SCHEDULE D

### Subsidiaries of the Company

The following is a list of the subsidiaries of Amalgamated Financial Corp.:

- 1) Amalgamated Bank

The following is a list of the subsidiaries of Amalgamated Bank:

- 1) Amalgamated Real Estate Management Company, Inc., incorporated in New York
- 2) 275 Property Holdings, Inc., incorporated in New York
- 3) 275A Property Holdings, Inc., incorporated in New York
- 4) 727 Holdings, LLC, formed in New Jersey
- 5) AT2017 LLC, formed in New Jersey
- 6) The New Hillman Company, incorporated in New York

The following is a list of the subsidiaries of Amalgamated Bank, as Trustee of Longview Ultra Construction Loan Investment Fund (for trust other real estate owned properties):

- 1) Mill Condominiums LLC, formed in New York
  - 2) LV Holdings LLC, formed in New York
  - 3) LV Holdings Sole Member LLC, formed in New York
  - 4) 1352 Lofts Property Corporation, incorporated in Pennsylvania
  - 5) 1352 Lofts Property Holdings, LP, formed in Pennsylvania
  - 6) 39 Grant Property Holdings, LLC, formed in Massachusetts
  - 7) Winthrop Club at Bletchley Park LLC, formed in Illinois
  - 8) 80 East Milton Avenue, LLC, formed in New Jersey
  - 9) Park Lafayette Property Holdings, LLC, formed in Wisconsin
  - 10) 21 Water Street Development LLC, formed in New York
  - 11) Water Street Property Holdings LLC, formed in New York
  - 12) Tower Drive Property Holdings LLC, formed in Rhode Island
  - 13) Tower Drive Development LLC, formed in Rhode Island
  - 14) One Madison R/A Holdings, LLC, formed in Delaware
  - 15) ABQ Studios, LLC, formed in New Mexico
  - 16) Pacifica Mesa Studios, LLC, formed in California
  - 17) Bletchley Hotel at O'Hare Field LLC, formed in Illinois
  - 18) Terrazio on South Wabash LLC, formed in Illinois
  - 19) 321 Glisan Property Holdings LLC, formed in Oregon
  - 20) Water Street Development at Sag Harbor LLC, formed in New York
  - 21) Broad Street Property Holdings GP Corporation, incorporated in Pennsylvania
  - 22) Broad Street Property Holdings, LP, formed in Pennsylvania
  - 23) Signit Parking at LAX, LLC, formed in California
  - 24) Humnit Hotel at LAX, LLC, formed in California
  - 25) Lacon Property Development LLC, formed in New York
  - 26) 66th Street Property Development LLC, formed in New York
  - 27) Fort Tryon Overlook LLC, formed in New York
  - 28) Fort Tryon Overlook Property Owner LLC, formed in New York
-

**AMALGAMATED FINANCIAL CORP.,**  
**AS ISSUER,**  
**AND**  
**U.S. BANK NATIONAL ASSOCIATION,**  
**AS TRUSTEE,**  
**SUBORDINATED INDENTURE**  
**DATED AS OF NOVEMBER 8, 2021**  
**SUBORDINATED DEBT SECURITIES**

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## CROSS-REFERENCE TABLE

Reconciliation and tie between the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”), and the Indenture dated as of November 8, 2021.

SECTION OF TRUST INDENTURE ACT	SECTION OF INDENTURE
310(a)(1) and (2)	7.09
310(a)(3) and (4)	Not applicable
310(a)(5)	7.09
310(b)	7.08 and 7.10
311(a) and (b)	7.13
312(a)	5.01 and 5.02(a)
312(b) and (c)	5.02(b) and (c)
313(a)	5.04(a)
313(b)(1)	Not applicable
313(b)(2)	5.04(b)
313(c)	5.04(c)
313(d)	5.04(d)
314(a)	5.03
314(b)	Not applicable
314(c)(1) and (2)	14.04
314(c)(3)	Not applicable
314(d)	Not applicable
314(e)	15.05
314(f)	Not applicable
315(a), (c) and (d)	7.01
315(b)	7.14
315(e)	6.14
316(a)(1)	6.12
316(a)(2)	Omitted
316(a) last sentence	8.04
316(b)	6.08
316(c)	8.06
317(a)	6.03 and 6.04
317(b)	4.03(a)
318(a)	15.07

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

Attention should also be directed to Section 318(c) of the Trust Indenture Act, which provides that the provisions of Sections 310 to and including Section 317 of the Trust Indenture Act are a part of and govern every qualified indenture, whether or not physically contained therein.

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## TABLE OF CONTENTS

<u>ARTICLE 1 DEFINITIONS</u>	1
Section 1.01 <i>Definitions.</i>	1
<u>ARTICLE 2 ISSUE, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES</u>	6
Section 2.01 <i>Amount Unlimited; Issuable in Series.</i>	6
Section 2.02 <i>Form of Trustee's Certificate of Authentication.</i>	6
Section 2.03 <i>Form of Securities Generally; Establishment of Terms of Series.</i>	7
Section 2.04 <i>Securities in Global Form.</i>	10
Section 2.05 <i>Denominations; Record Date; Payment of Interest.</i>	10
Section 2.06 <i>Execution, Authentication, Delivery and Dating of Securities.</i>	11
Section 2.07 <i>Exchange and Registration of Transfer of Securities.</i>	13
Section 2.08 <i>Temporary Securities.</i>	15
Section 2.09 <i>Mutilated, Destroyed, Lost or Stolen Securities.</i>	15
Section 2.10 <i>Cancellation.</i>	16
Section 2.11 <i>Book-Entry Only System.</i>	17
<u>ARTICLE 3 REDEMPTION OF SECURITIES</u>	17
Section 3.01 <i>Redemption of Securities, Applicability of Section.</i>	17
Section 3.02 <i>Notice of Redemption, Selection of Securities.</i>	17
Section 3.03 <i>Payment of Securities Called for Redemption.</i>	18
Section 3.04 <i>Redemption Suspended During Event of Default.</i>	19
<u>ARTICLE 4 PARTICULAR COVENANTS OF THE COMPANY</u>	20
Section 4.01 <i>Payment of Principal, Premium and Interest.</i>	20
Section 4.02 <i>Offices for Notices and Payments.</i>	20
Section 4.03 <i>Provisions as to Paying Agent.</i>	20
Section 4.04 <i>Statement as to Compliance.</i>	22
Section 4.05 <i>Corporate Existence.</i>	22
Section 4.06 <i>Reserved.</i>	22
Section 4.07 <i>Waiver of Covenants.</i>	22
<u>ARTICLE 5 SECURITYHOLDER LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE</u>	22
Section 5.01 <i>Securityholder Lists.</i>	22
Section 5.02 <i>Preservation and Disclosure of Lists.</i>	23
Section 5.03 <i>Reports by the Company.</i>	23
Section 5.04 <i>Reports by the Trustee.</i>	23
<u>ARTICLE 6 REMEDIES</u>	24
Section 6.01 <i>Events of Default; Acceleration of Maturity.</i>	24
Section 6.02 <i>Rescission and Annulment</i>	25
Section 6.03 <i>Collection of Indebtedness and Suits for Enforcement by Trustee.</i>	26
Section 6.04 <i>Trustee May File Proofs of Claim.</i>	27
Section 6.05 <i>Trustee May Enforce Claims Without Possession of Securities.</i>	27
Section 6.06 <i>Application of Money Collected.</i>	28
Section 6.07 <i>Limitation on Suits.</i>	28

<a href="#"><u>Section 6.08</u></a>	<a href="#"><u><i>Unconditional Right of Securityholders to Receive Principal and Interest.</i></u></a>	29
<a href="#"><u>Section 6.09</u></a>	<a href="#"><u><i>Restoration of Rights and Remedies.</i></u></a>	29
<a href="#"><u>Section 6.10</u></a>	<a href="#"><u><i>Rights and Remedies Cumulative.</i></u></a>	29
<a href="#"><u>Section 6.11</u></a>	<a href="#"><u><i>Delay or Omission Not Waiver.</i></u></a>	29
<a href="#"><u>Section 6.12</u></a>	<a href="#"><u><i>Control by Securityholders.</i></u></a>	29
<a href="#"><u>Section 6.13</u></a>	<a href="#"><u><i>Waiver of Past Defaults.</i></u></a>	30
<a href="#"><u>Section 6.14</u></a>	<a href="#"><u><i>Undertaking for Costs.</i></u></a>	30
<a href="#"><u>Section 6.15</u></a>	<a href="#"><u><i>Waiver of Stay or Extension Laws.</i></u></a>	31
 <a href="#"><u>ARTICLE 7 CONCERNING THE TRUSTEE</u></a>		31
<a href="#"><u>Section 7.01</u></a>	<a href="#"><u><i>Duties and Responsibilities of Trustee.</i></u></a>	31
<a href="#"><u>Section 7.02</u></a>	<a href="#"><u><i>Reliance on Documents, Opinions, etc.</i></u></a>	32
<a href="#"><u>Section 7.03</u></a>	<a href="#"><u><i>No Responsibility for Recitals, etc.</i></u></a>	34
<a href="#"><u>Section 7.04</u></a>	<a href="#"><u><i>Ownership of Securities.</i></u></a>	34
<a href="#"><u>Section 7.05</u></a>	<a href="#"><u><i>Moneys to be Held in Trust.</i></u></a>	34
<a href="#"><u>Section 7.06</u></a>	<a href="#"><u><i>Compensation and Expenses of Trustee.</i></u></a>	34
<a href="#"><u>Section 7.07</u></a>	<a href="#"><u><i>Officer's Certificate or Opinion of Counsel as Evidence.</i></u></a>	35
<a href="#"><u>Section 7.08</u></a>	<a href="#"><u><i>Disqualifications; Conflicting Interest of Trustee.</i></u></a>	36
<a href="#"><u>Section 7.09</u></a>	<a href="#"><u><i>Eligibility of Trustee.</i></u></a>	36
<a href="#"><u>Section 7.10</u></a>	<a href="#"><u><i>Resignation or Removal of Trustee.</i></u></a>	36
<a href="#"><u>Section 7.11</u></a>	<a href="#"><u><i>Acceptance by Successor Trustee.</i></u></a>	37
<a href="#"><u>Section 7.12</u></a>	<a href="#"><u><i>Successor by Merger, etc.</i></u></a>	38
<a href="#"><u>Section 7.13</u></a>	<a href="#"><u><i>Limitations on Rights of Trustee as Creditor.</i></u></a>	38
<a href="#"><u>Section 7.14</u></a>	<a href="#"><u><i>Notice of Default.</i></u></a>	39
<a href="#"><u>Section 7.15</u></a>	<a href="#"><u><i>Appointment of Authenticating Agent.</i></u></a>	39
 <a href="#"><u>ARTICLE 8 CONCERNING THE SECURITYHOLDERS</u></a>		41
<a href="#"><u>Section 8.01</u></a>	<a href="#"><u><i>Action by Securityholders.</i></u></a>	41
<a href="#"><u>Section 8.02</u></a>	<a href="#"><u><i>Proof of Execution by Securityholders.</i></u></a>	41
<a href="#"><u>Section 8.03</u></a>	<a href="#"><u><i>Who Are Deemed Absolute Owners.</i></u></a>	41
<a href="#"><u>Section 8.04</u></a>	<a href="#"><u><i>Company-Owned Securities Disregarded.</i></u></a>	42
<a href="#"><u>Section 8.05</u></a>	<a href="#"><u><i>Revocation of Consents; Future Securityholders Bound.</i></u></a>	42
<a href="#"><u>Section 8.06</u></a>	<a href="#"><u><i>Record Date.</i></u></a>	43
 <a href="#"><u>ARTICLE 9 SECURITYHOLDERS' MEETINGS</u></a>		43
<a href="#"><u>Section 9.01</u></a>	<a href="#"><u><i>Purposes of Meeting.</i></u></a>	43
<a href="#"><u>Section 9.02</u></a>	<a href="#"><u><i>Call of Meetings by Trustee.</i></u></a>	43
<a href="#"><u>Section 9.03</u></a>	<a href="#"><u><i>Call of Meetings by Company or Securityholders.</i></u></a>	43
<a href="#"><u>Section 9.04</u></a>	<a href="#"><u><i>Qualifications for Voting.</i></u></a>	44
<a href="#"><u>Section 9.05</u></a>	<a href="#"><u><i>Regulations.</i></u></a>	44
<a href="#"><u>Section 9.06</u></a>	<a href="#"><u><i>Voting.</i></u></a>	45
 <a href="#"><u>ARTICLE 10 SUPPLEMENTAL INDENTURES</u></a>		45
<a href="#"><u>Section 10.01</u></a>	<a href="#"><u><i>Supplemental Indentures without Consent of Securityholders.</i></u></a>	45
<a href="#"><u>Section 10.02</u></a>	<a href="#"><u><i>Supplemental Indentures with Consent of Holders.</i></u></a>	47
<a href="#"><u>Section 10.03</u></a>	<a href="#"><u><i>Compliance with Trust Indenture Act; Effect of Supplemental Indentures.</i></u></a>	48
<a href="#"><u>Section 10.04</u></a>	<a href="#"><u><i>Notation on Securities.</i></u></a>	48



<u>ARTICLE 11 CONSOLIDATION, MERGER, SALE OR CONVEYANCE</u>	48
<u>Section 11.01</u> <i>Company May Consolidate, etc., on Certain Terms.</i>	48
<u>Section 11.02</u> <i>Successor Corporation Substituted.</i>	49
<u>Section 11.03</u> <i>Opinion of Counsel and Officer's Certificate to be Given Trustee.</i>	49
<u>ARTICLE 12 SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS</u>	49
<u>Section 12.01</u> <i>Discharge of Indenture.</i>	49
<u>Section 12.02</u> <i>Deposited Moneys to be Held in Trust by Trustee.</i>	50
<u>Section 12.03</u> <i>Paying Agent to Repay Moneys Held.</i>	50
<u>Section 12.04</u> <i>Return of Unclaimed Moneys.</i>	50
<u>ARTICLE 13 IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS</u>	51
<u>Section 13.01</u> <i>Indenture and Securities Solely Corporate Obligations.</i>	51
<u>ARTICLE 14 DEFEASANCE AND COVENANT DEFEASANCE</u>	51
<u>Section 14.01</u> <i>Applicability of Article.</i>	51
<u>Section 14.02</u> <i>Defeasance and Discharge.</i>	51
<u>Section 14.03</u> <i>Covenant Defeasance.</i>	52
<u>Section 14.04</u> <i>Conditions to Defeasance or Covenant Defeasance.</i>	52
<u>Section 14.05</u> <i>Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.</i>	54
<u>ARTICLE 15 MISCELLANEOUS PROVISIONS</u>	54
<u>Section 15.01</u> <i>Benefits of Indenture Restricted to Parties and Securityholders.</i>	54
<u>Section 15.02</u> <i>Provisions Binding on Company's Successors.</i>	55
<u>Section 15.03</u> <i>Addresses for Notices, etc., to Company and Trustee.</i>	55
<u>Section 15.04</u> <i>Notice to Holders of Securities; Waiver.</i>	55
<u>Section 15.05</u> <i>Evidence of Compliance with Conditions Precedent.</i>	56
<u>Section 15.06</u> <i>Legal Holidays.</i>	56
<u>Section 15.07</u> <i>Trust Indenture Act to Control.</i>	56
<u>Section 15.08</u> <i>Execution in Counterparts.</i>	57
<u>Section 15.09</u> <i>Governing Law; Waiver of Jury Trial.</i>	57
<u>Section 15.10</u> <i>Severability; Entire Agreement.</i>	58
<u>Section 15.11</u> <i>Interpretations.</i>	58
<u>Section 15.12</u> <i>U.S.A. Patriot Act.</i>	58
<u>ARTICLE 16 SUBORDINATION OF SECURITIES</u>	58
<u>Section 16.01</u> <i>Securities Subordinate to Senior Indebtedness.</i>	58

**INDENTURE**, dated as of November 8, 2021 between Amalgamated Financial Corp., a public benefit corporation duly incorporated and existing under the laws of the State of Delaware (the “**Company**”), and U.S. Bank National Association, as trustee (the “**Trustee**,” which term shall include any successor trustee appointed pursuant to Article 7 of this Indenture).

**WHEREAS**, the Company deems it necessary to issue from time to time for its lawful purposes securities (the “**Securities**”) evidencing its indebtedness and has duly authorized the execution and delivery of this Indenture to provide for the issuance of the Securities in one or more series, unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, and to have such other provisions as shall be fixed as hereinafter provided; and

**WHEREAS**, the Company represents that all acts and things necessary to constitute these presents a valid indenture and agreement according to its terms have been done and performed, and the execution of this Indenture has in all respects been duly authorized, and the Company, in the exercise of legal right and power in it vested, is executing this Indenture;

**NOW, THEREFORE:**

In order to declare the terms and conditions upon which the Securities are authenticated, issued and received, and in consideration of the premises and the purchase and acceptance of the Securities by the holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of the respective holders from time to time of the Securities, as follows:

**ARTICLE 1**  
**DEFINITIONS**

**Section 1.01**     *Definitions.*

The terms defined in this Section (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section. All other terms used in this Indenture that are defined in the Trust Indenture Act or that are by reference therein defined in the Securities Act shall have the meanings (except as herein otherwise expressly provided or unless the context otherwise requires) assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of this Indenture as originally executed. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with United States generally accepted accounting principles as are generally accepted at the time of any computation. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

“**Additional Amounts**” shall mean any additional amounts to be paid by the Company in respect of Securities of a series, as may be specified pursuant to Section 2.03(b) hereof and in such Security and under the circumstances specified therein, in respect of specified taxes, assessments or other governmental charges imposed on certain holders who are United States Aliens.

“**Authorized Officer**” shall have the meaning set forth in Section 3.02 hereof.

“**Board of Directors**” or “**Board**” shall mean the Board of Directors of the Company or any duly authorized committee of such Board.

“**Board Resolution**” shall mean a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or by a committee acting under authority of or appointment by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Business Day**” shall mean, unless otherwise specified pursuant to Section 2.03(b), any day other than a Saturday or Sunday that is neither a legal holiday nor a day on which banking institutions or trust companies in the City of New York, New York, or any Place of Payment are authorized or obligated by law, regulation or executive order to remain closed.

“**Capital Stock**” shall mean, as to shares of a particular corporation, outstanding shares of stock of any class, whether now or hereafter authorized, irrespective of whether such class shall be limited to a fixed sum or percentage in respect of the rights of the holders thereof to participate in dividends and in the distribution of assets upon the voluntary liquidation, dissolution or winding up of such corporation.

“**Commission**” shall mean the Securities and Exchange Commission or any successor agency.

“**Company**” shall mean the person named as the “Company” in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor corporation.

“**Company Request**” and “**Company Order**” mean, respectively, a written request or order signed in the name of the Company by its Chief Executive Officer, President, Chief Financial Officer, Vice President, General Counsel, Secretary or Assistant Secretary or Treasurer or Assistant Treasurer and delivered to the Trustee.

“**Corporate Trust Office**” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at 333 Commerce Street, Suite 800, Nashville, Tennessee 37201, Attention: Wally Jones, CCTP, Vice President, U.S. Bank Global Corporate Trust, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the holders and the Company).

“**Covenant Defeasance**” shall have the meaning set forth in Section 14.03.

“**Default**” or “**Event of Default**” shall have the meaning specified in Article 6.

“**Defeasance**” shall have the meaning set forth in Section 14.02.

“**Depository**” shall mean, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more permanent global Securities, the person designated as Depository by the Company pursuant to Section 2.03(b), which must be a clearing agency registered under the Exchange Act, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depository” shall mean or include each person who is then a Depository hereunder, and if at any time there is more than one such person, “Depository” as used with respect to the Securities of any series shall mean the Depository with respect to the Securities of such series.

“**Dollar**” or “**\$**” shall mean a dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Exchange Date**” shall have the meaning set forth in Section 2.08.

“**Global Security**” or “**Global Securities**” means a Security or Securities, as the case may be, in the form established pursuant to Section 2.03 evidencing all or part of a Series of Securities, issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee.

“**Holder**,” “**Holder of Securities**,” “**securityholder**” or other similar term shall mean in the case of any Registered Security, the person in whose name such Security is registered in the Security Register kept by the Company for that purpose, in accordance with the terms hereof.

“**Indenture**” shall mean this instrument as originally executed and delivered or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including without limitation, the forms and terms of particular series of Securities established as contemplated by Article 2.

“**Material Subsidiary**” means Amalgamated Bank, or any successor thereof or any Subsidiary of the Company that is a depository institution and that has consolidated assets equal to 80% or more of the Company’s consolidated assets.

“**Officer’s Certificate**” shall mean a certificate signed by the Chief Executive Officer, President or other principal executive officer, or the Chief Financial Officer or other principal financial officer or principal accounting officer, Assistant Secretary, Treasurer or Controller of the Company and delivered to the Trustee.

“**Opinion of Counsel**” shall mean an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company and who shall be reasonably satisfactory to the Trustee, or who may be other counsel reasonably satisfactory to the Trustee.

“**Original Issue Discount Securities**” shall mean any Securities that are initially sold at a discount from the principal amount thereof and that provide upon an Event of Default for declaration of an amount less than the principal amount thereof to be due and payable upon acceleration thereof.

“**Outstanding**” or “**outstanding**,” when used with reference to Securities, shall, subject to the provisions of Section 7.08, Section 8.01 and Section 8.04, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

- (a) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated and held in trust by the Company (if the Company shall act as its own paying agent) for the holders of such Securities; provided, that if such Securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article 3, or provision satisfactory to the Trustee shall have been made for giving such notice;
- (c) Securities that have been defeased pursuant to Section 14.02 hereof; and
- (d) Securities that have been paid pursuant to Section 2.09, or Securities in exchange for, in lieu of and in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.07, unless proof satisfactory to the Trustee is presented that any such Securities are held by bona fide holders in due course.

“**Periodic Offering**” shall mean an offering of Securities of a series, from time to time, the specific terms of which (including, without limitation, the rate or rates of interest or formula for determining the rate or rates of interest thereon, if any, the maturity date or dates thereof and the redemption provisions, if any, with respect thereto) are to be determined by the Company upon the issuance of such Securities.

“**Person**” or “**person**” shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“**Place of Payment**,” when used with respect to the Securities of any series, means the place or places where, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on the Securities of that series are payable as specified as contemplated by Section 2.03(b).

“**Record date**” as used with respect to any interest payment date shall have the meaning specified in Section 2.05.

“**Registered Security**” shall mean any Security established pursuant to Section 2.01 and Section 2.03(b) that is registered on the Security Register of the Company.

“**Responsible Officer**,” when used with respect to the Trustee, shall mean any officer within Corporate Trust Office of the Trustee (or any successor group of the Trustee), including any Vice President, Assistant Vice President, Assistant Secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also shall mean, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject, and in each case, who has direct responsibility for the administration of this Indenture.

“**Securities**” shall have the meaning set forth in the preamble of this Indenture.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Security Register**” and “**Security Registrar**” shall have the respective meanings set forth in Section 2.07(a) hereof.

“**Senior Indebtedness**” means, without duplication, the principal, premium, if any, unpaid interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company whether or not a claim for post-filing interest is allowed in such proceeding), fees, charges, expenses, reimbursement and indemnification obligations, and all other amounts payable under or in respect of the following indebtedness of the Company, whether any such indebtedness exists as of the date of the Indenture or is created, incurred or assumed after such date: (i) all obligations for borrowed money, (ii) all obligations evidenced by debentures, Securities or other similar instruments, (iii) all obligations in respect of letters of credit or bankers acceptances or similar instruments (or reimbursement obligations with respect thereto), (iv) all obligations to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (v) all indebtedness of others guaranteed by the Company or any of its Subsidiaries or for which the Company or any of its Subsidiaries is legally responsible or liable (whether by agreement to purchase indebtedness of, or to supply funds or to invest in, others) and (vi) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by the Company but excluding any obligations of the Company which are required (as opposed to elected to be treated) as capitalized leases under United States generally accepted accounting principles.

“**Series**” or “**Series of Securities**” means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.01 and 2.03.

“**Subsidiary**” shall mean, in respect of any Person, any corporation, association, partnership, limited liability company or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person or (c) one or more Subsidiaries of such Person.

“**Trust Indenture Act**,” except as otherwise provided in this Indenture, shall mean the Trust Indenture Act of 1939, as amended, as in force at the date of this Indenture as originally executed.

“**Trustee**” shall mean the person identified as “Trustee” in the first paragraph hereof until the acceptance of appointment of a successor trustee pursuant to the provisions of Article 7, and thereafter shall mean such successor trustee, and if at any time there is more than one such person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“**United States Alien**” shall mean any person who, for United States federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership to the extent that one or more of its members is, for United States federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

“USA PATRIOT Act” shall have the meaning set forth in Section 15.12 hereof.

“Vice President” when used with respect to the Company or the Trustee shall mean any vice president, whether or not designated by a number or word or words added before or after the title “vice president,” including any Executive or Senior Vice President.

**ARTICLE 2**  
**ISSUE, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES**

**Section 2.01** *Amount Unlimited; Issuable in Series.*

Upon the execution of this Indenture, or from time to time thereafter, Securities up to the aggregate principal amount and containing terms and conditions from time to time authorized by or pursuant to a Board Resolution, or in an indenture supplemental hereto or Officer’s Certificate, as set forth in Section 2.03, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and make available for delivery the Securities to or upon Company Order, without any further action by the Company but subject to the provisions of Section 2.03, or in an indenture supplemental hereto or Officer’s Certificate, as set forth in Section 2.03.

The Securities may be issued in one or more series. The aggregate principal amount of Securities of all series that may be authenticated and delivered and outstanding under this Indenture is not limited hereunder. The Securities of a particular series may be issued up to the aggregate principal amount of Securities for such series from time to time authorized by or pursuant to a Board Resolution. Securities may differ between Series in respect of any matters; provided that all Series of Securities shall be equally and ratably entitled to the benefits of this Indenture.

**Section 2.02** *Form of Trustee’s Certificate of Authentication.*

The form of the Trustee’s certificate of authentication to be borne by the Securities shall be in substantially the following form:

Form of Trustee’s Certificate of Authentication

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Dated: U.S. Bank National Association  
As Trustee

By: \_\_\_\_\_  
Authorized Signatory

**Section 2.03** *Form of Securities Generally; Establishment of Terms of Series.*

(a) The Registered Securities, if any, of each series, the temporary global Securities of each series, if any, and the permanent global Securities of each series, if any, shall be in the forms established from time to time in or pursuant to one or more Board Resolutions (and, to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officer's Certificate (to which shall be attached true and correct copies of the relevant Board Resolution(s)) detailing such establishment) or established in an indenture supplemental hereto.

(b) The Securities may be issued in typewritten, printed or engraved form with such letters, numbers or other marks of identification or designation (including CUSIP numbers, if then generally in use) and such legends or endorsements printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage.

(c) At or prior to the initial issuance of Securities of any series, the particular terms of Securities of such series shall be established in or pursuant to one or more Board Resolutions (and to the extent established pursuant to rather than set forth in one or more Board Resolutions, in an Officer's Certificate (to which shall be attached true and correct copies of the relevant Board Resolution(s)) detailing such establishment) or established in an indenture supplemental hereto, including the following:

(1) the designation of the particular series (which shall distinguish such series from all other series);

(2) the aggregate principal amount of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to this Indenture and except for any Securities which, pursuant to Section 2.06, are deemed never to have been authenticated and delivered hereunder);

(3) whether Securities of the series are to be issuable as Registered Securities, whether any Securities of the series are to be issuable initially in temporary global form and, if so, the name of the Depositary with respect to any such temporary global Security, and whether any Securities of the series are to be issuable in permanent global form and, if so, whether beneficial owners of interests in any such permanent global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.07 and the name of the Depositary with respect to any such permanent global Security;

(4) the date as of which any temporary Security in global form representing Outstanding Securities of such series shall be dated, if other than the date of original issuance of the first Securities of the series to be issued;



(5) the person to whom any interest on any Registered Security of the series shall be payable, if other than the person in whose name that Security (or one or more predecessor Securities) is registered at the close of business on the regular record date for such interest, the extent to which, or the manner in which, any interest payable on a temporary global Security on an interest payment date will be paid if other than in the manner provided in Section 2.05 and the extent to which, or the manner in which, any interest payable on a permanent global Security on an interest payment date will be paid;

(6) the date or dates on which the principal of the Securities of such series is payable;

(7) the rate or rates, and if applicable the method used to determine the rate, at which the Securities of such series shall bear interest, if any, the date or dates from which such interest shall accrue, the date or dates on which such interest shall be payable and the record date or dates for the interest payable on any Registered Securities on any interest payment date;

(8) the place or places at which, subject to the provisions of Section 4.02, the principal of (and premium, if any, on) and any interest on Securities of such series shall be payable, any Registered Securities of the series may be surrendered for registration of transfer, Securities of the series may be surrendered for exchange and notices and demands to or upon the Company in respect of the Securities of the series and this Indenture may be served;

(9) the obligation, if any, of the Company to redeem or purchase Securities of such series, at the option of the Company or at the option of a holder thereof, pursuant to any sinking fund or other redemption provisions and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series may be so redeemed or purchased, in whole or in part;

(10) if other than minimum denominations of \$1,000 and any integral multiple thereof, the denominations in which any Registered Securities of such series shall be issuable;

(11) if other than the principal amount thereof, the portion of the principal amount of Securities of such series which shall be payable upon declaration of acceleration of the maturity thereof;

(12) the currency, currencies or currency units in which payment of the principal of (and premium, if any, on) and any interest on any Securities of the series shall be payable if other than the currency of the United States of America and the manner of determining the equivalent thereof in the currency of the United States of America for purposes of the definition of “**Outstanding**” in Section 1.01;

(13) if the principal of (and premium, if any, on) or any interest on the Securities of the series are to be payable, at the election of the Company or a holder thereof, in one or more currencies or currency units, other than that or those in which the Securities are stated to be payable, the currency or currencies in which payment of the principal of (and premium, if any, on) and any interest on Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;

- (14) if the amount of payments of principal of (and premium, if any, on) or any interest on the Securities of the series may be determined with reference to an index, the manner in which such amounts shall be determined;
- (15) whether the Securities will be issued in book-entry only form;
- (16) any interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such series;
- (17) if either or both of Section 14.02 and Section 14.03 do not apply to the Securities of the series;
- (18) whether and under what circumstances the Company will pay Additional Amounts in respect of any series of Securities and whether the Company has the option to redeem such Securities rather than pay such Additional Amounts;
- (19) any provisions relating to the extension of maturity of, or the renewal of, Securities of such series, or the conversion of Securities of such series into other securities of the Company;
- (20) any provisions relating to the purchase or redemption of all or any portion of a tranche or series of Securities, including the period of notice required to redeem those Securities;
- (21) the terms and conditions, if any, pursuant to which the Securities of the series are secured;
- (22) the subordination terms of the Securities of the series; and
- (23) any other terms of the Securities or provisions relating to the payment of principal, premium (if any), or interest thereon, including, but not limited to, whether such Securities are issuable at a discount or premium, as amortizable Securities, and if payable in, convertible or exchangeable for commodities or for the securities of the Company or any third party.

All Securities of any one series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution or Officer's Certificate referred to above or as set forth in an indenture supplemental hereto, and, unless otherwise provided, the authorized principal amount of any series may be increased to provide for issuances of additional Securities of such series. If so provided by or pursuant to the Board Resolution or Officer's Certificate or supplemental indenture referred to above, the terms of such Securities to be issued from time to time may be determined as set forth in such Board Resolution, Officer's Certificate or supplemental indenture, as the case may be. All Securities of any one series shall be substantially identical except as to denomination, interest rate, maturity and other similar terms and except as may be provided otherwise by or pursuant to such Board Resolution, Officer's Certificate or supplemental indenture.

**Section 2.04**     *Securities in Global Form.*

If Securities of a series are issuable in global form, as contemplated by Section 2.03(b), then, notwithstanding clause (10) of Section 2.03(b) and the provisions of Section 2.05, any such Security in global form shall represent such of the Securities of such series Outstanding as shall be specified therein, and any such Security in global form may provide that it shall represent the aggregate amount of Securities Outstanding from time to time endorsed thereon and that the aggregate amount of Securities Outstanding represented thereby may from time to time be reduced to reflect any exchanges of beneficial interests in such Security in global form for Securities of such series as contemplated herein. Any endorsement of a Security in global form to reflect the amount, or any decrease in the amount, of Securities Outstanding represented thereby shall be made by the Trustee or the Security Registrar in such manner and upon instructions given by such person or persons as shall be specified in such Security in global form or in the Company Order to be delivered to the Trustee pursuant to Section 2.06 or Section 2.08. Subject to the provisions of Section 2.06 and, if applicable, Section 2.08, the Trustee or the Security Registrar shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the person or persons specified in such Security in global form or in the applicable Company Order. If a Company Order pursuant to Section 2.06 or Section 2.08 has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel.

The provisions of the last sentence of Section 2.06 shall apply to any Security represented by a Security in global form if such Security was never issued and sold by the Company and the Company delivers to the Trustee or the Security Registrar the Security in global form together with written instructions (which need not be represented by a Company Order and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of Section 2.06.

Notwithstanding the provisions of Section 2.05, unless otherwise specified as contemplated by Section 2.03(b), payment of principal of and any premium and interest on any Security in permanent global form shall be made to the persons or persons specified therein.

**Section 2.05**     *Denominations; Record Date; Payment of Interest.*

(a)            Unless otherwise provided as contemplated by Section 2.03(b) with respect to any series of Securities, any Registered Securities of a series shall be issuable in minimum denominations of \$1,000.

(b)            The term “**record date**” as used with respect to an interest payment date for any series of a Registered Security shall mean such day or days as shall be specified as contemplated by Section 2.03(b); provided, that in the absence of any such provisions with respect to any series, such term shall mean (1) the last day of the calendar month next preceding such interest payment date if such interest payment date is the 15th day of a calendar month; or (2) the 15th day of a calendar month next preceding such interest payment date if such interest payment date is the first day of the calendar month.

Unless otherwise provided as contemplated by Section 2.03 with respect to any series of Securities, the person in whose name any Registered Security is registered at the close of business on the record date with respect to an interest payment date shall be entitled to receive the interest payable on such interest payment date notwithstanding the cancellation of such Security upon any registration of transfer or exchange thereof subsequent to such record date prior to such interest payment date; provided, that if and to the extent the Company shall default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the persons in whose names the Securities are registered on a subsequent record date established by notice given to the extent and in the manner set forth in Section 15.04 by or on behalf of the Company to the holders of Securities of the series in default not less than 15 days preceding such subsequent record date, such record date to be not less than five days preceding the date of payment of such defaulted interest, or in any other lawful manner acceptable to the Trustee.

(c) Unless otherwise specified by Board Resolution or Company Order for a particular series of Securities, the principal of, redemption premium, if any, on and interest, if any, on the Securities of any series shall be payable at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series, in Dollars; provided, that, at the option of the Company, payment of interest with respect to a Registered Security may be paid by check mailed to the holders of the Registered Securities entitled thereto at their last addresses as they appear on the Security Register or wired if held in book-entry form at the Depository.

**Section 2.06** *Execution, Authentication, Delivery and Dating of Securities.*

The Securities shall be signed on behalf of the Company by its Chief Executive Officer, its President or one of its Vice Presidents. Such signatures may be the manual, electronic or facsimile signatures of such then current officers.

Any Security may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such officer. Securities bearing the manual, electronic or facsimile signatures of individuals who were, at the actual date of the execution of such Security, the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities, as the case may be, or did not hold such offices at the date of such Securities.

Upon the execution and delivery of this Indenture, the Company shall deliver to the Trustee an Officer's Certificate as to the incumbency and specimen signatures of officers authorized to execute and deliver the Securities and give instructions under this Section and, as long as Securities are Outstanding under this Indenture, such incumbency certificate shall be amended and replaced whenever an officer is to be added or deleted from the listing. The Trustee may conclusively rely on the documents delivered pursuant to this Section (unless revoked by superseding comparable documents) and Section 2.03 hereof as to the authorization of the Board of Directors of any Securities delivered hereunder, and the form and terms thereof, and as to the authority of the instructing officers referred to in this Section so to act.

The Trustee shall at any time, and from time to time, authenticate Securities for original issue in an unlimited aggregate principal amount upon receipt by the Trustee of a Company Order; provided, that with respect to Securities of a series subject to a Periodic Offering, (a) such Company Order may be delivered to the Trustee prior to the delivery to the Trustee of such Securities for authentication and delivery, (b) the Trustee shall authenticate and deliver Securities of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount, if any, established for such series, pursuant to a Company Order, (c) the maturity date or dates, original issue date or dates, interest rate or rates and any other terms of Securities of such series shall be determined by Company Order or pursuant to such procedures, and (d) if provided for in such procedures, such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing.

Prior to the issuance of a Security of any new series, and the authentication thereof by the Trustee, the Trustee shall have received and (subject to Section 7.02) shall be fully protected in relying on:

(a) The Board Resolution or Officer's Certificate or indenture supplemental hereto establishing the terms and the form of the Securities of that series pursuant to Section 2.01 and Section 2.03;

(b) An Officer's Certificate stating that all conditions precedent provided for in this Indenture relating to the issuance, authentication and delivery of Securities in such form have been complied with;

(c) An Opinion of Counsel stating that the form and terms of such Securities have been established in conformity with the provisions of this Indenture; provided, that with respect to Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to receive such Opinion of Counsel only once at or prior to the time of the first authentication of Securities of such series.

With respect to Securities of a series offered in a Periodic Offering, the Trustee may rely, as to the authorization by the Company of any of such Securities, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and other documents delivered pursuant to this Section in connection with the first authentication of Securities of such series unless and until such Opinion of Counsel or other documents have been superseded or revoked. In connection with the authentication and delivery of Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to assume that the Company's instructions to authenticate and deliver such Securities do not violate any rules, regulations or orders of any governmental agency or commission having jurisdiction over the Company.

Each Registered Security shall be dated the date of its authentication except as otherwise provided by Board Resolution or Officer's Certificate or indenture supplemental hereto.

The aggregate principal amount of Securities of any series outstanding at any time may not exceed any limit upon the maximum principal amount for such series set forth in or pursuant to the Board Resolution or Officer's Certificate or indenture supplemental hereto delivered pursuant to Section 2.03, except as provided in Section 2.08.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security, a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 2.10 together with a written statement stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

**Section 2.07**     *Exchange and Registration of Transfer of Securities.*

(a)            The Company shall keep, at an office or agency to be designated and maintained by the Company in accordance with Section 4.02 (as such, a “**Security Registrar**”), registry books (the “**Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall register Registered Securities and shall register the transfer of Registered Securities of each such series as provided in this Article 2. Such Security Register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times such Security Register shall be open for inspection by the Trustee. Upon due presentment for registration of transfer of any Registered Security of a particular series at such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, the Company shall execute and register and the Trustee shall authenticate and make available for delivery in the name of the transferee or transferees a new Registered Security or Registered Securities of such series of any authorized denominations and for an equal aggregate principal amount and tenor.

(b)            At the option of the holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series of any authorized denominations and of an equal aggregate principal amount and tenor. Registered Securities to be exchanged shall be surrendered at any such office or agency maintained pursuant to Section 4.02 for such purpose in a Place of Payment, and the Company shall execute and register and the Trustee shall authenticate and make available for delivery in exchange therefor the Security or Securities that the securityholder making the exchange shall be entitled to receive.

(c)            All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

All Registered Securities presented for registration of transfer or for exchange, redemption or payment, as the case may be, shall (if so required by the Company or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee or the Security Registrar duly executed by, the holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith, other than exchanges pursuant to the terms of this Indenture not involving any transfer.

The Company shall not be required (1) to exchange or register the transfer of Securities of any series to be redeemed for a period of 15 days next preceding any selection of such Securities to be redeemed, or (2) to exchange or register the transfer of any Registered Security so selected, called or being called for redemption, except in the case of any such series to be redeemed in part the portion thereof not to be so redeemed.

(d) Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 2.03(b), any permanent global Security shall be exchangeable pursuant to this Section only as provided in this paragraph. If the beneficial owners of interests in a permanent global Security are entitled to exchange such interests for Securities of such series and of like tenor and principal amount of another authorized form and denomination, as specified as contemplated by Section 2.03(b), then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee or the Security Registrar definitive Securities of that series in aggregate principal amount equal to the principal amount of such permanent global Security executed by the Company. On or after the earliest date on which such interests may be so exchanged, in accordance with instructions given by the Company to the Trustee or the Security Registrar and the Depositary (which instructions shall be in writing), such permanent global Security shall be surrendered from time to time by the Depositary or such other depositary as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, or to the Security Registrar, to be exchanged, in whole or in part, for definitive Securities of the same series without charge and the Trustee shall authenticate and make available for delivery in accordance with such instructions, in exchange for each portion of such permanent global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such permanent global Security to be exchanged which shall be in the form of Registered Securities; provided, that no such exchanges may occur for a period of 15 days next preceding any selection of Securities of that series and of like tenor for redemption. Promptly following any such exchange in part, such permanent global Security should be returned by the Trustee or the Security Registrar to the Depositary or such other depositary referred to above in accordance with the instructions of the Company referred to above. If a Registered Security is issued in exchange for any portion of a permanent global Security after the close of business at the office or agency where such exchange occurs on (i) any record date and before the opening of business at such office or agency on the relevant interest payment date, or (ii) any special record date and before the opening of business at such office or agency on the related proposed date for payment of defaulted interest as provided in Section 2.05, interest or defaulted interest, as the case may be, will not be payable on such interest payment date or proposed date for payment, as the case may be, in respect of such Registered Security, but will be payable on such interest payment date or proposed date for payment, as the case may be, only to the person to whom interest in respect of such portion of such permanent global Security is payable in accordance with the provisions of this Indenture.

(e) Notwithstanding anything contained herein to the contrary, neither the Trustee nor the Security Registrar shall be responsible for ascertaining whether any transfer complies with the restrictions set forth in this Indenture, the registration provisions of or exemptions from the Securities Act or applicable state securities laws. Further, the Trustee will not have any responsibility for any actions taken or not taken by the Depositary.

**Section 2.08** *Temporary Securities.*

Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall, upon Company Order, authenticate and make available for delivery, temporary Securities of such series (typewritten, printed, lithographed or otherwise produced). Such temporary Securities, in any authorized denominations, shall be substantially in the form of the definitive Securities in lieu of which they are issued, in registered form, in the form approved from time to time by or pursuant to a Board Resolution but with such omissions, insertions, substitutions and other variations as may be appropriate for temporary Securities, all as may be determined by the Company, but not inconsistent with the terms of this Indenture or any provision of applicable law.

Except in the case of temporary Securities in global form (which shall be exchanged as hereinafter provided), if temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company maintained pursuant to Section 4.02 in a Place of Payment for such series for the purpose of exchanges of Securities of such series, without charge to the holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a like aggregate principal amount of definitive Securities of the same series and of like tenor of authorized denominations.

Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary global Security of a series (the “**Exchange Date**”), the Company shall deliver to the Trustee definitive Securities of that series, in aggregate principal amount equal to the principal amount of such temporary global Security, executed by the Company. On or after the Exchange Date such temporary global Security shall be presented and surrendered by the Depositary to the Trustee, as the Company’s agent for such purpose, or to the Security Registrar, to be exchanged, in whole or from time to time in part, for definitive Securities of such series without charge, and the Trustee shall authenticate and make available for delivery, in exchange for each portion of such temporary global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such temporary global Security to be exchanged.

Every temporary Security shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities.

**Section 2.09** *Mutilated, Destroyed, Lost or Stolen Securities.*

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.



If there shall be delivered to the Company and the Trustee (a) evidence to their satisfaction of the destruction, loss or theft of any Security and (b) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall, subject to the following paragraph, execute and the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and any such new Security, if any, shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

**Section 2.10**     *Cancellation.*

All Securities surrendered for payment, redemption, exchange or registration of transfer or for credit against any sinking fund payment, as the case may be, shall, if surrendered to the Company or any agent of the Company or of the Trustee, be delivered to the Trustee. All Registered Securities so delivered shall be promptly cancelled by the Trustee, upon written request of the Company. The Company may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section except as expressly provided by this Indenture. Any cancelled Securities held by the Trustee shall be disposed in accordance with its then customary procedures and, upon written request of the Company, the Trustee shall deliver to the Company a certificate of such disposal. The acquisition of any Securities by the Company shall not operate as a redemption or satisfaction of the Indebtedness represented thereby unless and until such Securities are surrendered to the Trustee for cancellation.

**Section 2.11** *Book-Entry Only System.*

If specified by the Company pursuant to Section 2.03(b) with respect to Securities represented by a Security in global form, a series of Securities may be issued initially in book-entry only form and, if issued in such form, shall be represented by one or more Securities in global form registered in the name of the Depository or other depository designated with respect thereto. So long as such system of registration is in effect, (a) Securities of such series so issued in book-entry only form will not be issuable in the form of or exchangeable for Securities in certificated or definitive registered form, (b) the records of the Depository or such other depository will be determinative for all purposes and (c) neither the Company, the Trustee nor any paying agent, Security Registrar or transfer agent for such Securities will have any responsibility or liability for (i) any aspect of the records relating to or payments made on account of owners of beneficial interests in the Securities of such series, (ii) maintaining, supervising or reviewing any records relating to such beneficial interests, (iii) receipt of notices, voting and requesting or directing the Trustee to take, or not to take, or consenting to, certain actions hereunder, or (iv) the records and procedures of the Depository, or such other depository, as the case may be.

Members of, or participants in, the Depository shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Security for all purposes whatsoever.

**ARTICLE 3**  
**REDEMPTION OF SECURITIES**

**Section 3.01** *Redemption of Securities, Applicability of Section.*

Redemption of Securities of any series as permitted or required by the terms thereof shall be made in accordance with the terms of such Securities as specified pursuant to Section 2.03 hereof and this Article; provided, however, that if any provision of any series of Securities shall conflict with any provision of this Section, the provision of such series of Securities shall govern.

**Section 3.02** *Notice of Redemption, Selection of Securities.*

In case the Company shall desire to exercise the right to redeem all or, as the case may be, any part of a series of Securities pursuant to Section 3.01, it shall fix a date for redemption. Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company, or, at the Company's written request, by the Trustee in the name and at the expense of the Company. The Company or the Trustee, as the case may be, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, on that date prior to the date fixed for a redemption to the holders of such Securities so to be redeemed, as a whole or in part, (a) as set forth in Board Resolutions, as described in Section 2.03, or (b) as determined by the Chief Executive Officer, the Chief Financial Officer, the President, the Treasurer, any Executive Vice President, the Secretary and each officer of the Company designated by any of the foregoing officers (each, an "Authorized Officer") and evidenced by the preparation of an offering document or an Officer's Certificate specifying the period of notice of such redemption. If the Board Resolutions or an Authorized Officer do not specify a longer period of notice of such redemption, the Company or, at the written request of the Company, the Trustee, shall give notice of such redemption, in the manner and to the extent set forth in Section 15.04, at least ten Business Days and not more than 60 calendar days prior to the date fixed for a redemption to the holders of such Securities so to be redeemed as a whole or in part. Notice given in such manner shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice or any defect in the notice to the holder of any such Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other such Security. If the Company requests the Trustee to give any notice of redemption, it shall make such request in writing in an Officer's Certificate delivered to the Trustee at least ten days prior to the designated date for delivering such notice, unless a shorter period is satisfactory to the Trustee.

Each such notice of redemption shall specify the date fixed for redemption, the redemption price at which such Securities are to be redeemed, the CUSIP numbers of such Securities, the Place of Payment where such Securities maturing after the date of redemption, are to be surrendered for payment of the redemption prices, that payment will be made upon presentation and surrender of such Securities, that interest accrued to the date fixed for redemption will be paid as specified in the notice, and that on and after the date interest thereon or on the portions thereof to be redeemed will cease to accrue. If less than all of a series is to be redeemed, the notice of redemption shall specify the numbers of the Securities to be redeemed. In case any Security is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, upon surrender of such Security, a new Security or Securities of the same series in principal amount equal to the unredeemed portion thereof will be issued.

On or before the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit in trust with the Trustee or with one or more paying agents an amount of money sufficient to redeem on the redemption date all the Securities or portions of Securities so called for redemption at the appropriate redemption price, together with accrued interest, if any, to the date fixed for redemption. If less than all of a series of Securities is to be redeemed, the Company will give the Trustee adequate written notice at least 45 days in advance (unless a shorter notice shall be satisfactory to the Trustee) as to the aggregate principal amount of Securities to be redeemed.

If less than all the Securities of a series are to be redeemed, the Trustee shall select, by lot or in such other manner as it shall deem appropriate and fair, not more than 60 days prior to the date of redemption, the numbers of such Securities Outstanding not previously called for redemption, to be redeemed in whole or in part. The portion of principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof. The Trustee shall promptly notify the Company of the Securities to be redeemed. If, however, less than all the Securities of a series having differing issue dates, interest rates and stated maturities are to be redeemed, the Company in its sole discretion shall select the particular Securities of such series to be redeemed and shall notify the Trustee in writing at least 45 days prior to the relevant redemption date.

**Section 3.03** *Payment of Securities Called for Redemption.*

If notice of redemption has been given as above provided, the Securities or portions of Securities with respect to which such notice has been given shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with any interest accrued to the date fixed for redemption, and on and after that date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to that date) interest on such Securities or portions of Securities so called for redemption shall cease to accrue. On presentation and surrender of such Securities subject to redemption at the Place of Payment and in the manner specified in such notice, such Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided, that unless otherwise specified as contemplated by Section 2.03, installments of interest on Registered Securities whose stated maturity date is on or prior to the date of redemption shall be payable to the holders of such Registered Securities, or one or more predecessor Securities, registered as such at the close of business on the relevant record dates according to their terms and the provisions of Section 2.05.

At the option of the Company, payment with respect to Registered Securities may be made by check to the holders of such Securities or other persons entitled thereto against presentation and surrender of such Securities.

Any Security that is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the holder thereof or such holder's attorney duly authorized in writing), and upon such presentation, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the principal of the Security so presented. If a temporary global Security or permanent global Security is so surrendered, such new Security so issued shall be a new temporary global Security or permanent global Security, respectively.

**Section 3.04**     *Redemption Suspended During Event of Default.*

The Trustee shall not redeem any Securities (unless all Securities then outstanding are to be redeemed) or commence the giving of any notice of redemption of Securities during the continuance of any Event of Default of which a Responsible Officer of the Trustee has actual knowledge or has received written notice thereof, except that where the giving of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem such Securities, provided funds are deposited with it for such purpose. Except as aforesaid, any moneys theretofore or thereafter received by the Trustee shall, during the continuance of such Event of Default, be held in trust for the benefit of the securityholders and applied in the manner set forth in Section 6.06; provided, that in case such Event of Default shall have been waived as provided herein or otherwise cured, such moneys shall thereafter be held and applied in accordance with the provisions of this Article.

**ARTICLE 4**  
**PARTICULAR COVENANTS OF THE COMPANY**

**Section 4.01**     *Payment of Principal, Premium and Interest.*

The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any, on) and any interest on each of the Securities of a series at the place, at the respective times and in the manner provided in the terms of the Securities and this Indenture.

**Section 4.02**     *Offices for Notices and Payments.*

If Securities of a series are issuable only as Registered Securities, the Company will maintain in each Place of Payment for such series an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served.

The Company will give to the Trustee notice of the location of each such office or agency and of any change in the location thereof. In case the Company shall fail to maintain any such office or agency as required, or shall fail to give such notice of the location or of any change in the location thereof, presentations and surrenders of Securities of that series may be made and notices and demands may be served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the same as its agent to receive such respective presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in accordance with the requirements set forth above for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee and the holders of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby initially designates the principal Corporate Trust Office of the Trustee as the office of the Company where Registered Securities may be presented for payment, for registration of transfer and for exchange as in this Indenture provided and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served; provided, however, that the Trustee shall not be deemed an agent of the Company for service of legal process.

**Section 4.03**     *Provisions as to Paying Agent.*

(a)             Whenever the Company shall appoint a paying agent other than the Trustee with respect to the Securities of any series, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(1)             that it will hold sums held by it as such agent for the payment of the principal of (and premium, if any, on) or any interest on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such series) in trust for the benefit of the persons entitled thereto until such sums shall be paid to such persons or otherwise disposed of as herein provided and will notify the Trustee of the receipt of sums to be so held;

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Securities of such series) to make any payment of the principal of (or premium, if any, on) or any interest on the Securities of such series when the same shall be due and payable; and

(3) that at any time when any such failure has occurred and is continuing, it will, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of (and premium, if any) or any interest on the Securities of any series, set aside, segregate and hold in trust for the benefit of the persons entitled thereto a sum sufficient to pay such principal (and premium, if any) or any interest so becoming due until such sums shall be paid to such persons or otherwise disposed of as herein provided. The Company will promptly notify the Trustee of any failure to take such action.

(c) Whenever the Company shall have one or more paying agents with respect to a series of Securities, it will, on or prior to each due date of the principal of (and premium, if any, on) or any interest on, any Securities, deposit with a paying agent a sum sufficient to pay the principal (and premium, if any) or any interest, so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(d) Anything in this Section to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to one or more or all series of Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for such series by it or any paying agent hereunder as required by this Section, such sums to be held by the Trustee upon the trusts herein contained, and upon such payment by any paying agent to the Trustee, such paying agent shall be released from all further liability with respect to such money.

(e) Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 12.03 and Section 12.04.

**Section 4.04** *Statement as to Compliance.*

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, commencing with the fiscal year ending in the year during which the first series of Securities is issued hereunder (but in no event more than one year from the issuance of the first series hereunder), an Officer's Certificate signed by the Chief Executive Officer, President or other principal executive officer or by the Chief Financial Officer or other principal financial officer or principal accounting officer, Assistant Secretary, Treasurer or Controller of the Company, stating, as to each signer thereof, that:

- (a) a review of the activities of the Company during such year and of performance under this Indenture has been made under his supervision; and
- (b) to the best of his knowledge, based on such review, the Company has fulfilled all its obligations under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

**Section 4.05** *Corporate Existence.*

Subject to the provisions of Article 11, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises and the corporate existence and rights (charter and statutory) and franchises of its Subsidiaries; provided, that the Company shall not be required to, or to cause any Subsidiary to, preserve any right or franchise or to keep in full force and effect the corporate existence of any Subsidiary if the Company shall determine that the keeping in existence or preservation thereof is no longer desirable in or consistent with the conduct of the business of the Company.

**Section 4.06** *Reserved.*

**Section 4.07** *Waiver of Covenants.*

The Company may omit in any particular instance to comply with any covenant or condition set forth herein if before or after the time for such compliance the holders of a majority in principal amount of the Securities of all series affected thereby then Outstanding shall either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

**ARTICLE 5**  
**SECURITYHOLDER LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE**

**Section 5.01** *Securityholder Lists.*

The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee (1) semiannually, within 15 days before each record date when any Securities of a series are Outstanding, a list, in such form as the Trustee may reasonably require, of all information in the possession or control of the Company as to the names and addresses of the holders of such Registered Securities as of such date, and (2) at such other times as the Trustee may request in writing, within 10 days after receipt by the Company of any such request, a list, in such form as the Trustee may reasonably require, of all information in the possession or control of the Company as to the names and addresses of the holders of Registered Securities of a particular series specified by the Trustee as of a date not more than 15 days prior to the time such information is furnished; provided, that if and so long as the Trustee shall be the Security Registrar with respect to such series, such list shall not be required to be furnished.

**Section 5.02** *Preservation and Disclosure of Lists.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of each series of Securities contained in the most recent list furnished to it as provided in Section 5.01 or received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(b) Securityholders may communicate as provided in Section 312(b) of the Trust Indenture Act with other securityholders with respect to their rights under this Indenture or under the Securities. The Company, the Trustee, the Security Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act with respect to the sending of any material pursuant to a request made pursuant to Section 312(b) of the Trust Indenture Act.

**Section 5.03** *Reports by the Company.*

(a) The Company covenants so long as Securities are Outstanding, the Company shall file with the Trustee and the Commission, and transmit to holders, copies of such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided, that with respect to any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, the Company intends to file such information, documents or reports with the Commission in electronic form in accordance with Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system. Compliance with the foregoing, or any successor electronic system approved by the Commission, will constitute delivery by the Company of such reports to the Trustee and holders in compliance with the Trust Indenture Act.

(b) Notwithstanding anything to the contrary herein, the Trustee will have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of the reports, information and documents to the Trustee in accordance with this Section 5.03 will be solely for the purposes of compliance with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents (whether or not filed in electronic form) is for informational purposes only and the Trustee's receipt of such will not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall have no liability or responsibility for the filing, content or timelines of any report hereunder aside from any report transmitted under this Indenture.

**Section 5.04** *Reports by the Trustee.*

(a) Within 60 days after March 15 of each year commencing with the first March 15 following the first issuance of Securities pursuant to Section 2.01, so long as any Securities are outstanding hereunder and if there has been any change in the following, the Trustee shall transmit by mail, first-class postage prepaid, to the securityholders, as their names appear upon the Security Register, a brief report dated as of such March 15 with respect to any of the events specified in Section 313(a) and Section 313(b)(2) of the Trust Indenture Act that may have occurred since the later of the immediately preceding March 15 and the date of this Indenture.



- (b) The Trustee shall transmit the reports required by Section 313(a) of the Trust Indenture Act at the times specified therein.
- (c) The Trustee shall comply with Sections 313(b) and 313(c) of the Trust Indenture Act.
- (d) Reports under this Section will be transmitted in the manner and to the Persons required by Section 313(c) and Section 313(d) of the Trust Indenture Act. The Company agrees to notify the Trustee when any Securities become listed on any stock exchange.

**ARTICLE 6**  
**REMEDIES**

**Section 6.01** *Events of Default; Acceleration of Maturity.*

In case one or more of the following Events of Default with respect to a particular series shall have occurred and be continuing:

- (a) default in (i) the payment of the principal of (or premium, if any, on) any of the Securities of such series as and when the same shall become due and payable either at maturity, upon redemption, by declaration or otherwise or (ii) any payment required by any sinking or analogous fund established with respect to that series;
- (b) default in the payment of any installment of interest upon any of the Securities of such series as and when the same shall become due and payable, and continuance of such default for a period of 90 days;
- (c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company contained in the Securities or in this Indenture for a period of 90 days after the date on which written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee, or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the Securities of that series at the time Outstanding;
- (d) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company or the Material Subsidiary in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or any Material Subsidiary or for any substantial part of their respective property, or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(e) the Company or the Material Subsidiary shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Company or the Material Subsidiary or for any substantial part of their respective property, or shall make any general assignment for the benefit of creditors; or

(f) any other Event of Default provided with respect to Securities of that series; then, if an Event of Default described in clause (a), (b), (c), or (f) shall have occurred and be continuing, and in each and every such case, unless the principal amount of all the Securities of such series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by securityholders) may declare the principal amount of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding; or, if an Event of Default described in clause (d) or (e) shall have occurred and be continuing, and in each and every such case, unless the principal of all the Securities of such series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of all the Securities of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by securityholders), may declare the principal of all the Securities (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities) to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities contained to the contrary notwithstanding.

#### **Section 6.02**     *Rescission and Annulment*

The provisions in Section 6.01 are subject to the condition that if, at any time after the principal of the Securities of any one or more of all series, as the case may be, shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such series or of all the Securities, as the case may be, and the principal of (and premium, if any, on) all Securities of such series or of all the Securities, as the case may be (or, with respect to Original Issue Discount Securities, such lesser amount as may be specified in the terms of such Securities), which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any) and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest specified in the Securities of such series or all Securities, as the case may be (or, with respect to Original Issue Discount Securities, at the rate specified in the terms of such Securities for interest on overdue principal thereof upon maturity, redemption or acceleration of such series, as the case may be), to the date of such payment or deposit, and such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or willful misconduct, and any and all defaults under the Indenture, other than the non-payment of the principal of Securities that has become due by acceleration, shall have been remedied; then and in every such case the holders of a majority in aggregate principal amount of the Securities of such series (or of all the Securities, as the case may be) then Outstanding, by written notice to the Company and to the Trustee, may waive all defaults with respect to that series or with respect to all Securities, as the case may be in such case, treated as a single class and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the securityholders, as the case may be, shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the securityholders, as the case may be, shall continue as though no such proceedings had been taken.

**Section 6.03** *Collection of Indebtedness and Suits for Enforcement by Trustee.*

The Company covenants that if

(a) default is made in the payment of any installment of interest on any Security when such interest becomes due and payable and such default continues for a period of 90 days, or

(b) default is made in the payment of the principal or premium, if any, of any Security at the maturity thereof, including any maturity occurring by reason of a call for redemption or otherwise, the Company will, upon demand of the Trustee, pay to it, for the benefit of the holders of such Securities, the whole amount that shall have become due and payable on such Securities for principal or premium, if any, and interest, with interest upon the overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by such Securities; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceedings to judgment or final decree, and may enforce the same against the Company or any other obligor upon the Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the securityholders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

**Section 6.04** *Trustee May File Proofs of Claim.*

In the case of the pendency of a receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of principal and premium, if any, and any interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the holders of Securities allowed in such judicial proceeding; and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any receiver, assignee, trustee, liquidator or sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each holder of Securities to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the holders of Securities, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06. To the extent that such payment of reasonable compensation, expenses, disbursements, advances and other amounts out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, moneys, securities and other property which the holders of the Securities may be entitled to receive in such proceedings, whether in liquidation or under any plan or reorganization or arrangements or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of the holder of a Security any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder of a Security in any such proceeding.

**Section 6.05** *Trustee May Enforce Claims Without Possession of Securities.*

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Securities in respect of which such judgment has been recovered.

**Section 6.06**     *Application of Money Collected.*

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or premium, if any, or any interest, upon presentation of the Securities, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 7.06 or 14.05;

SECOND: To the payment of all Senior Indebtedness of the Company if and to the extent required by Article 16;

THIRD: To the payment of the amounts then due and unpaid upon the Securities for principal of and premium, if any, and any interest on the Securities, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities, for principal and any interest, respectively; and

FOURTH: To the Company or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

**Section 6.07**     *Limitation on Suits.*

No holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1)            such holder has previously given written notice to the Trustee of a continuing Event of Default;

(2)            the holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3)            such holder or holders have offered to the Trustee indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(4)            the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceedings; and

(5)            no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the holders of a majority in principal amount of the Outstanding Securities; it being understood and intended that no one or more such holders of Securities shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such holders of Securities or to obtain or to seek to obtain priority or preference over any other of such holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such holders of Securities.

**Section 6.08** *Unconditional Right of Securityholders to Receive Principal and Interest.*

Notwithstanding any other provision in this Indenture, the holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and (subject to Section 2.05 and Section 3.02) any interest on such Security on the respective stated maturities expressed in such Security (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such holder.

**Section 6.09** *Restoration of Rights and Remedies.*

If the Trustee or any holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such holder, then and in every such case the Company, the Trustee and the holders of Securities shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the holders shall continue as though no such proceeding has been instituted.

**Section 6.10** *Rights and Remedies Cumulative.*

Except as provided in Section 2.09, no right or remedy herein conferred upon or reserved to the Trustee or to the holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 6.11** *Delay or Omission Not Waiver.*

No delay or omission of the Trustee or of any holder of any Security to exercise any right or remedy accruing upon any Default shall impair any such right or remedy or constitute a waiver of any such Default or any acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the holders of Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the holders of Securities, as the case may be.

**Section 6.12** *Control by Securityholders.*

The holders of a majority in principal amount of Outstanding Securities of each series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, provided that

- (1) such direction shall not be in conflict with any statute, rule of law or with this Indenture;
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and
- (3) the Trustee need not take any action which it in good faith determines might involve it in personal liability or be unjustly prejudicial to the securityholders not consenting (provided, however, that the Trustee shall not have an affirmative obligation to determine whether such action is unduly prejudicial to the securityholders not consenting).

Upon receipt by the Trustee of any such direction with respect to Securities of a series all or part of which is represented by a temporary global Security or a permanent global Security, the Trustee shall establish a record date for determining holders of Outstanding Securities of such series entitled to join in such direction, which record date shall be at the close of business on the day the Trustee receives such direction. The holders on such record date, or their duly designated proxies, and only such persons, shall be entitled to join in such direction, whether or not such holders remain holders after such record date, provided that, unless such majority in principal amount shall have been obtained prior to the day which is 90 days after such record date, such direction shall automatically and without further action by any holder be cancelled and of no further effect. Nothing in this paragraph shall prevent a holder, or a proxy of a holder, from giving, after expiration of such 90-day period, a new direction identical to a direction which has been cancelled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 6.12.

**Section 6.13** *Waiver of Past Defaults.*

The holders of a majority in principal amount of the Securities of each series at the time Outstanding may, on behalf of the holders of all the Securities of that series, waive any past default hereunder and its consequences, except a default:

- (a) in the payment of the principal of, premium, if any, or any interest on any Security; or
- (b) in respect of a covenant or provision hereof that pursuant to Article 10 cannot be modified or amended without the consent of the holder of each Outstanding Security affected.

Upon any such waiver, such default shall cease to exist, and any Default or Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**Section 6.14** *Undertaking for Costs.*

All parties to this Indenture agree, and each holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder, or group of holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted by any holder of any Securities for the enforcement of the payment of the principal of, premium, if any, or any interest on any Security on or after the respective stated maturities expressed in such Security (or, in the case of redemption, on or after the redemption date, except, in the case of a partial redemption, with respect to the portion not so redeemed).

**Section 6.15** *Waiver of Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension laws wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**ARTICLE 7  
CONCERNING THE TRUSTEE**

**Section 7.01** *Duties and Responsibilities of Trustee.*

(a) The Trustee, prior to the occurrence of an Event of Default of a particular series and after the curing of all Events of Default of such series which may have occurred, undertakes to perform such duties and only such duties with respect to such series as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture without independent verification, investigation or inquiry of any kind; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of this Indenture.

(b) In case an Event of Default with respect to a particular series has occurred (which has not been cured), the Trustee shall exercise with respect to such series such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) Whether or not therein expressly so provided, every provision hereof that in any way relates to the Trustee is subject to paragraphs (a) and (b) of this Section 7.01 and to Section 7.02.

(d) No provision of this Indenture shall be construed as requiring the Trustee to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(e) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.



**Section 7.02** *Reliance on Documents, Opinions, etc.*

Subject to Section 315(a) through Section 315(d) of the Trust Indenture Act:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, judgement, bond, debenture, note, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties not only as the due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained herein. The Trustee need not investigate any fact or matter stated in the document;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or any Assistant Secretary of the Company; and whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate and/or Opinion of Counsel;

(c) before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon. The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the holders of any Securities pursuant to the provisions of this Indenture, unless such holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or documents, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(g) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(h) in no event will the Trustee be responsible or liable for special, indirect, incidental, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(i) the Trustee shall have no duty to monitor or confirm compliance by the Company with the terms of this Indenture or any Security;

(j) the Trustee shall not be bound to make any investigation into (i) the performance of or compliance with any of the covenants or agreements set forth herein, (ii) the occurrence of any default, or the validity, enforceability, effectiveness or genuineness of this Indenture or any other agreement, instrument or document;

(k) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified for all costs (including those of its retained professionals), are extended to, and will be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed or appointed to act hereunder;

(l) in no event will the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, strikes, pandemics, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, sabotage, epidemics, riots, nuclear or natural catastrophes, earthquakes, fires, floods, or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services, labor disputes, acts of civil or military authorities and governmental actions, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility; it being understood that the Trustee will use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances;

(m) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers hereunder;

(n) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture;

(o) the Trustee shall not be liable or responsible for any calculation in connection with the transactions contemplated hereunder nor for any information used in connection with such calculation; and

(p) the permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty.

**Section 7.03** *No Responsibility for Recitals, etc.*

The recitals contained herein and in the Securities, other than the Trustee's certificate of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities, provided that the Trustee shall not be relieved of its duty to authenticate Securities only as authorized by this Indenture. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities, it will not be accountable for the Company's use of the proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision hereof, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Securities or any other document in connection with the sale of the Securities or under this Indenture other than its certificate of authentication.

**Section 7.04** *Ownership of Securities.*

The Trustee, any authenticating agent, any paying agent, any Security Registrar or any other agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, authenticating agent, paying agent, Security Registrar or such other agent of the Company or of the Trustee.

**Section 7.05** *Moneys to be Held in Trust.*

Subject to the provisions of Section 12.04 hereof, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held un-invested in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received by it hereunder except such as it may agree in writing with the Company to pay thereon.

**Section 7.06** *Compensation and Expenses of Trustee.*

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder as agreed in writing between the Company and the Trustee (which to the extent permitted by law shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and, except as otherwise expressly provided, the Company will pay or reimburse the Trustee forthwith upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its gross negligence or willful misconduct. If any property other than cash shall at any time be subject to the lien of this Indenture, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such lien, shall be entitled to make and to be reimbursed for, advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The Company also covenants to indemnify, defend, protect and hold each of the Trustee acting in any capacity or any predecessor Trustee and their agents, accountants, consultants, counsel and other experts employed by it in the exercise and performance of its powers and duties as Trustee harmless from and against, any and all loss, damage, claims, suit, liability or expense, (including attorney's fees and expenses, and taxes (other than taxes based upon, measured or determined by, the income of the Trustee)) arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim of liability, whether asserted by the Company, a Holder or any other person or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction, and the fees and disbursements of the Trustee's agents, legal counsel, accountants and experts) and including taxes (other than taxes based upon, measured by or determined by the income of the Trustee). The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company of its obligations hereunder. The Company will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent will not be unreasonably withheld. The obligations of the Company under this Section shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities. This indemnification shall apply to officers, directors, employees, shareholders and agents of the Trustee.

To secure the Company's obligations under this Section, the Trustee shall have a senior claim to which the Securities are hereby made subordinate on all money or property held or collected by the Trustee, except that held in trust to pay principal of (and premium, if any) and interest, if any, on particular Securities.

When the Trustee incurs expenses or renders services after an Event of Default, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy law.

The provisions of this Section shall survive the resignation or removal of the Trustee and the termination of this Indenture. "Trustee" for purposes of this Section 7.06 will include any predecessor Trustee, but the negligence or bad faith of any Trustee will not affect the rights of any other Trustee under this Section 7.06. The provisions of this Section 7.06 will, to the extent permitted by law, survive any termination of this Indenture (including, without limitation, termination in accordance with any bankruptcy laws) and the resignation or removal of the Trustee.

**Section 7.07** *Officer's Certificate or Opinion of Counsel as Evidence.*

Subject to the provisions of Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate or Opinion of Counsel delivered to the Trustee, and such certificate or opinion, in the absence of gross negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

**Section 7.08** *Disqualifications; Conflicting Interest of Trustee.*

If the Trustee has or shall acquire any “conflicting interest” within the meaning of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

**Section 7.09** *Eligibility of Trustee.*

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, (c) shall have at all times a combined capital and surplus of not less than \$50,000,000 and (d) shall not be the Company or any person directly or indirectly controlling, controlled by, or under common control with the Company. If such corporation publishes reports of condition at least annually, pursuant to law, or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation at any time shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

**Section 7.10** *Resignation or Removal of Trustee.*

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series by giving written notice of resignation to the Company. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to the applicable series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee at the expense of the Company. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(1) the Trustee shall fail to comply with Section 7.08 with respect to any series of Securities after written request therefor by the Company or by any securityholder who has been a bona fide holder of a Security or Securities of such series for at least six months, or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 with respect to any series of Securities and shall fail to resign after written request therefor by the Company or by any such securityholder, or

(3) the Trustee shall become incapable of acting with respect to any series of Securities, or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, the Company may remove the Trustee with respect to the applicable series of Securities and appoint a successor trustee with respect to such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.14, any securityholder of such series who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) Upon 30 days' prior written notice, the holders of a majority in aggregate principal amount of the Securities of all series (voting as one class) at the time Outstanding may at any time remove the Trustee with respect to Securities of all series and appoint a successor trustee with respect to the Securities of all series.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section shall become effective upon the appointment of a successor trustee and the acceptance of appointment by the successor trustee as provided in Section 7.11.

**Section 7.11** *Acceptance by Successor Trustee.*

Any successor trustee appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee with respect to all or any applicable series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the predecessor trustee shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the predecessor trustee. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor trustee all such rights and powers. Any trustee, including the initial Trustee, ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 7.06.

In case of the appointment hereunder of a successor trustee with respect to the Securities of one or more (but not all) series, the Company, the predecessor Trustee and each successor trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such trustees co-trustees of the same trust and that each such trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such trustee and that no trustee will be responsible for any notice given to, or received by, or any act or failure to act on the part of any other trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring trustee will become effective to the extent provided therein, such retiring trustee will have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Securities other than as hereinafter expressly set forth, and such successor trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the retiring trustee with respect to the Securities; but, on request of the Company or such successor trustee, such retiring trustee, upon payment of its charges with respect to the Securities and subject to Section 12.02 will duly assign, transfer and deliver to such successor trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring trustee hereunder with respect to the Securities, subject to its claim, if any, provided for in Section 7.06.

No successor trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor trustee shall be qualified and eligible under the provisions of this [Article 7](#).

Upon acceptance of appointment by a successor trustee as provided in this Section, the Company shall mail notice of the succession of such trustee hereunder to all holders of Securities of any applicable series as the names and addresses of such holders shall appear on the registry books. If the Company fails to mail such notice in the prescribed manner within ten days after the acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be so mailed at the expense of the Company.

**Section 7.12**     *Successor by Merger, etc.*

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be qualified and eligible under the provisions of this [Article 7](#), without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

**Section 7.13**     *Limitations on Rights of Trustee as Creditor.*

The Trustee shall comply with [Section 311\(a\)](#) of the Trust Indenture Act, excluding any creditor relationship described in [Section 311\(b\)](#) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to [Section 311\(a\)](#) of the Trust Indenture Act to the extent included therein.

**Section 7.14** *Notice of Default.*

Within 90 days after the occurrence of any default on a series of Securities hereunder of which a Responsible Officer of the Trustee has received notice or is deemed to have notice in accordance with this Section 7.14, the Trustee shall transmit to all securityholders of that series, in the manner and to the extent provided in Section 15.04, notice of such default hereunder actually known to a Responsible Officer of the Trustee, unless such default shall have been cured or waived; provided, that except in the case of a default in the payment of the principal of or interest on any Security or on the payment of any sinking or purchase fund installment, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determine that the withholding of such notice is in the interests of the securityholders; and provided, further, that in the case of any default of the character specified in clause (c) of Section 6.01 no such notice to securityholders shall be given until at least 30 days after the occurrence thereof. The Trustee will not be required to take notice or be deemed to have notice of any default or Event of Default, except failure by the Company to pay or cause to be made any of the payments required to be made to the Trustee, unless a Responsible Officer shall receive written notice of such default or Event of Default from the Company or by the holders of at least 25% in aggregate principal amount of the then Outstanding Securities delivered to the Corporate Trust Office of the Trustee and such notice states that it is a notice of a default or Event of Default with respect to the Securities and this Indenture, and in the absence of such notice so delivered the Trustee may conclusively assume no default or Event of Default exists. For the purpose of this Section, the term “**default**” means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

**Section 7.15** *Appointment of Authenticating Agent.*

The Trustee may appoint an authenticating agent or agents (which may be an affiliate or affiliates of the Company) with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue or upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 2.09, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee’s certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an authenticating agent and a certificate of authentication executed on behalf of the Trustee by an authenticating agent. Each authenticating agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America or of any State or Territory thereof or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers or to otherwise act as authenticating agent, (b) is subject to supervision or examination by federal, state, territorial or District of Columbia authority, and (c) shall have at all times a combined capital and surplus of not less than \$50,000,000. If such authenticating agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such authenticating agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an authenticating agent shall cease to be eligible in accordance with the provisions of this Section, such authenticating agent shall resign immediately in the manner and with the effect specified in this Section.



Any corporation into which an authenticating agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such authenticating agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of such authenticating agent, shall continue to be an authenticating agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or such authenticating agent.

An authenticating agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an authenticating agent by giving written notice thereof to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such authenticating agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor authenticating agent which shall be acceptable to the Company and shall promptly give notice of such appointment to all holders of Securities in the manner and to the extent provided in Section 15.04. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an authenticating agent. No successor authenticating agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each authenticating agent from time to time reasonable compensation for its services under this Section.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Dated: U.S. Bank National Association  
As Trustee

By: \_\_\_\_\_  
Authorized Signatory

If all of the Securities of a series may not be originally issued at one time, and the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested by the Company in writing, shall appoint in accordance with this Section an authenticating agent (which, if so requested by the Company, shall be such affiliate of the Company) having an office in a Place of Payment designated by the Company with respect to such series of Securities, provided that the terms and conditions of such appointment are acceptable to the Trustee.

**ARTICLE 8**  
**CONCERNING THE SECURITYHOLDERS**

**Section 8.01**     *Action by Securityholders.*

Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Securities of any or all series may take any action (including the making of any demand or request, the giving of any authorization, notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by securityholders in person or by agent or proxy appointed in writing, or (b) by a combination of such instrument or instruments and any such record of such a meeting of securityholders.

In determining whether the holders of a specified percentage in aggregate principal amount of the Securities of any or all series have taken any action (including the making of any demand or request, the giving of any authorization, direction, notice, consent or waiver or the taking of any other action), (i) the principal amount of any Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be outstanding for such purposes shall be equal to the amount of the principal thereof that could be declared to be due and payable upon an Event of Default pursuant to the terms of such Original Issue Discount Security at the time the taking of such of such action is evidenced to the Trustee, and (ii) the principal amount of a Security denominated in a foreign currency or currency unit shall be the Dollar equivalent, determined as of the date of original issuance of such Security in accordance with Section 2.03(b) hereof, of the principal amount of such Security.

**Section 8.02**     *Proof of Execution by Securityholders.*

Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a securityholder or its agent or proxy, or of the holding by any person of a Security, shall be sufficient and conclusive in favor of the Trustee and the Company if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

The principal amount and serial numbers of Registered Securities held by any person, and the date of holding the same, shall be proved by the Security Register.

The record of any securityholders' meeting shall be proved in the manner provided in Section 9.06.

**Section 8.03**     *Who Are Deemed Absolute Owners.*

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or of the Trustee may deem the person in whose name such Registered Security shall be registered upon the Security Register to be, and may treat him as, the absolute owner of such Registered Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon), for the purpose of receiving payment of or on account of the principal of (and premium, if any) and, subject to the provisions of Section 2.05 and Section 2.07, any interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or of the Trustee shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

Notwithstanding the foregoing, with respect to any temporary or permanent global Security, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or of the Trustee, from giving effect to any written certification, proxy or other authorization furnished by a Depository, or impair, as between a Depository and holders of beneficial interests in any temporary or permanent global Security, as the case may be, the operation of customary practices governing the exercise of the rights of the Depository as holder of such temporary or permanent global Security.

**Section 8.04**     *Company-Owned Securities Disregarded.*

In determining whether the holders of the required aggregate principal amount of Securities have provided any request, demand, authorization, notice, direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

**Section 8.05**     *Revocation of Consents; Future Securityholders Bound.*

At any time prior to the taking of any action by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action, any holder of a Security, the identifying number of which is shown by the evidence to be included in the Securities the holders of which have consented to such action, may, by filing written notice with the Trustee at its office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security and of any Security issued upon registration of transfer of or in exchange or substitution therefor in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, irrespective of whether or not any notation in regard thereto is made upon such Security. Any action taken by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Securities.

**Section 8.06** *Record Date.*

The Company may, but shall not be obligated to, set a record date for purposes of determining the identity of holders of Securities of any series entitled to vote or consent to any action by vote or consent or to otherwise take any action under this Indenture authorized or permitted by [Section 6.12](#) and [Section 6.13](#) or otherwise under this Indenture. Such record date shall be the later of (i) the date 20 days prior to the first solicitation of such consent or vote or other action and (ii) the date of the most recent list of holders of such Securities delivered to the principal corporate trust office of the Trustee pursuant to [Section 5.01](#) prior to such solicitation. If such a record date is fixed, those persons who were holders of such Securities at the close of business on such record date shall be entitled to vote or consent or take such other action, or to revoke any such action, whether or not such persons continue to be holders after such record date, and for that purpose the Outstanding Securities shall be computed as of such record date.

**ARTICLE 9**  
**SECURITYHOLDERS' MEETINGS**

**Section 9.01** *Purposes of Meeting.*

A meeting of holders of any or all series of Securities may be called at any time and from time to time pursuant to the provisions of this Article for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to waive any default hereunder and its consequences, or to take any other action authorized to be taken by securityholders pursuant to any of the provisions of [Article 6](#);
- (b) to remove the Trustee and appoint a successor trustee pursuant to the provisions of [Article 7](#);
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of [Section 10.02](#); or
- (d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Securities of any or all series, as the case may be, under any other provision of this Indenture or under applicable law.

**Section 9.02** *Call of Meetings by Trustee.*

The Trustee may at any time call a meeting of securityholders of any or all series to take any action specified in [Section 9.01](#), to be held at such time and at such place in New York, New York or as the Trustee shall determine. Notice of every meeting of the securityholders of any or all series, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given in the manner provided in [Section 15.04](#) not less than 20 nor more than 180 days prior to the date fixed for the meeting.

**Section 9.03** *Call of Meetings by Company or Securityholders.*

In case at any time the Company, pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Securities of any or all series, as the case may be, then Outstanding, shall have requested the Trustee to call a meeting of securityholders of any or all series to take any action authorized in [Section 9.01](#), by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have provided notice of such meeting in the manner provided in [Section 15.04](#) within 30 days after receipt of such request, then the Company or the holders of such Securities in the amount above specified may determine the time and the place in New York, New York or Los Angeles, California for such meeting and may call such meeting by giving notice thereof as provided in [Section 9.02](#).

**Section 9.04**     *Qualifications for Voting.*

To be entitled to vote at any meeting of securityholders a person shall be a holder of one or more Securities of such series Outstanding with respect to which a meeting is being held or a person appointed by an instrument in writing as proxy by such a holder or holders. The only persons who shall be entitled to be present or to speak at any meeting of the securityholders of any series shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

**Section 9.05**     *Regulations.*

Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of securityholders of a series, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it deems fit. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Article 8 and the appointment of any proxy shall be proved in the manner specified in Article 8. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Article 8 or other proof.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by securityholders as provided in Section 9.03, in which case the Company or the securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Securities represented at the meeting and entitled to vote.

Subject to the provisions of Section 8.01 and Section 8.04, at any meeting each securityholder or proxy shall be entitled to one vote for each \$1,000 (or the Dollar equivalent thereof in connection with Securities issued in a foreign currency or currency unit) Outstanding principal amount of Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote except as a securityholder or proxy. Any meeting of securityholders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time, and the meeting may be reconvened without further notice.

**Section 9.06** *Voting.*

The vote upon any resolution submitted to any meeting of securityholders shall be by written ballot on which shall be subscribed the signatures of the securityholders or proxies and on which shall be inscribed the identifying number or numbers or to which shall be attached a list of identifying numbers of the Securities held or represented by them. The chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of securityholders shall be prepared by the secretary of the meeting and there shall be attached to the record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that the notice was mailed as provided in Section 9.02. The record shall be signed and verified by the chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

**ARTICLE 10**  
**SUPPLEMENTAL INDENTURES**

**Section 10.01** *Supplemental Indentures without Consent of Securityholders.*

Without the consent of any holders of Securities, the Company, when authorized by or pursuant to Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) for one or more of the following purposes:

- (a) to evidence the succession of another corporation to the Company, or successive successions, pursuant to Article 11 hereof, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company herein and in the Securities;
- (b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as its Board of Directors shall consider to be for the protection of the holders of Securities, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth, with such period of grace, if any, and subject to such conditions as such supplemental indenture may provide;
- (c) to establish any series of Securities and the form or terms of securities of any series as permitted by Section 2.01 and Section 2.03, including, without limitation, any subordination provisions and any conversion or exchange provisions applicable to Securities that are convertible into or exchangeable for other securities or property, and any deletions from or additions or changes to this Indenture in connection therewith (provided that any such deletions, additions and changes shall not be applicable to any other series of Securities then Outstanding);
- (d) to add any additional Events of Default with respect to all or any series of Securities (as shall be specified in such supplemental indenture);

(e) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance, covenant defeasance and/or satisfaction and discharge of any series of Securities pursuant to Article 14, provided that any such action shall not adversely affect the interests of any holder of a Security of such series or any other Security in any material respect;

(f) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities, registrable or not registrable as to principal;

(g) to make provisions with respect to conversion or exchange rights of holders of Securities of any series;

(h) in the case of any series of Securities which are convertible into or exchangeable for commodities or for the securities of the Company to safeguard or provide for the conversion or exchange rights, as the case may be, of such Securities in the event of any reclassification or change of outstanding securities or any merger, consolidation, statutory share exchange or combination of the Company with or into another Person or any sale, lease, assignment, transfer, disposition or other conveyance of all or substantially all of the properties and assets of the Company to any other Person or other similar transactions, if expressly required by the terms of such series of Securities established pursuant to Section 2.03;

(i) to add to, delete from or revise the conditions, limitations or restrictions on issue, authentication and delivery of Securities of any series;

(j) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the Trust Indenture Act, excluding however, the provisions referred to in Section 316(a)(2) of the Trust Indenture Act or any corresponding provision in any similar federal statute hereafter enacted;

(k) to modify, eliminate or add to any of the provisions of this Indenture, provided that any such change or elimination (i) shall become effective only when there is no Security of any series Outstanding and created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision or (ii) shall not apply to any Security Outstanding;

(l) to conform the Indenture or the Securities to the description thereof in the related prospectus, offering memorandum or disclosure document (as provided in an Officer's Certificate delivered to the Trustee);

(m) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provisions contained herein or in any supplemental indenture;

(n) to add guarantees with respect to, or to secure, any series of Security;

(o) to evidence and provide for the acceptance and appointment hereunder by a successor trustee with respect to the Securities of one or more series and to add or change any provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, pursuant to Section 7.11; and

(p) to make any change to the Securities of any series or to make any other provisions in regard to matters or questions arising under this Indenture that do not adversely affect the legal rights under this Indenture of any holder of Securities of any series issued under this Indenture, including provisions necessary or desirable to provide for or facilitate the administration of the trusts hereunder.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. No supplemental indenture shall be effective as against the Trustee unless and until the Trustee has duly executed and delivered the same.

**Section 10.02** *Supplemental Indentures with Consent of Holders.*

With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Securities of all series at the time Outstanding affected by such supplemental indenture (voting as one class), the Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Securities of such series under this Indenture; provided, that no such supplemental indenture shall (a) extend the fixed maturity of any Securities, or reduce the principal amount thereof or premium, if any, or reduce the rate or extend the time of payment of interest thereon, without the consent of the holder of each Security so affected, (b) reduce the aforesaid percentage of Securities, the consent of the holders of which is required for any such supplemental indenture, without the consent of the holders of all Securities then Outstanding, (c) modify the subordination provisions in a manner adverse to the holders of such Securities, or (d) modify any of the above provisions.

Upon the request of the Company, accompanied by a copy of a Board Resolution certified by the Secretary or an Assistant Secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of securityholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the securityholders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.



Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Article 10, the Company shall provide notice, in the manner and to the extent provided in Section 15.04, setting forth in general terms the substance of such supplemental indenture, to all holders of Securities of each series so affected. Any failure of the Company so to provide such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

**Section 10.03** *Compliance with Trust Indenture Act; Effect of Supplemental Indentures.*

Any supplemental indenture executed pursuant to the provisions of this Article 10 shall comply with the Trust Indenture Act, as then in effect. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10 and subject to the provisions in any supplemental indenture relating to the prospective application of such instrument, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities theretofore or thereafter authenticated and delivered hereunder shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

The Trustee, subject to the provisions of Section 7.01 and Section 7.02, shall be entitled to receive and shall be fully protected in relying upon an Officer's Certificate and Opinion of Counsel as conclusive evidence that any such supplemental indenture complies with the provisions of this Article 10 and that all conditions precedent thereto have been satisfied.

**Section 10.04** *Notation on Securities.*

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. New Securities of any series so modified as to conform, in the opinion of the Company and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered, without charge to the securityholders, in exchange for the Securities of such series then Outstanding.

**ARTICLE 11**  
**CONSOLIDATION, MERGER, SALE OR CONVEYANCE**

**Section 11.01** *Company May Consolidate, etc., on Certain Terms.*

The Company covenants that it will not merge into or consolidate with any other corporation or sell or convey all or substantially all of its assets to any person, firm or corporation, unless (a) either the Company shall be the continuing corporation, or the successor corporation (if other than the Company) shall be a corporation organized and existing under the laws of the United States of America or a state thereof or the District of Columbia and such corporation shall expressly assume the due and punctual payment of the principal of (and premium, if any, on) and any interest on all the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture in form satisfactory to the Trustee, executed and delivered to the Trustee by such corporation, and (b) the Company or such successor corporation, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition.

**Section 11.02** *Successor Corporation Substituted.*

In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for, and may exercise every right and power of, the Company, with the same effect as if it had been named herein as the party of the first part. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall make available for delivery any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution thereof.

In case of any such consolidation, merger, sale or conveyance such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

**Section 11.03** *Opinion of Counsel and Officer's Certificate to be Given Trustee.*

The Trustee shall receive an Opinion of Counsel and Officer's Certificate as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption, complies with the provisions of this Article 11 and that all conditions precedent herein provided for relating to such transaction have been complied with.

**ARTICLE 12**  
**SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS**

**Section 12.01** *Discharge of Indenture.*

If at any time:

(a) the Company shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated (other than (i) Securities that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 2.09, and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.03), or

(b) all such Securities of such series not theretofore delivered to the Trustee for cancellation (i) shall have become due and payable, or (ii) are by their terms to become due and payable within one year, or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company in the case of (b)(i), (b)(ii) or (b)(iii) above shall deposit or cause to be deposited with the Trustee as trust funds the entire amount (other than moneys repaid by the Trustee or any paying agent to the Company in accordance with [Section 12.04](#)) sufficient to pay at maturity or upon redemption all Securities of such series not theretofore delivered to the Trustee for cancellation, including principal (and premium, if any) and any interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company with respect to such series, then this Indenture shall cease to be of further effect with respect to the Securities of such series, and the Trustee, on demand of and at the cost and expense of the Company and subject to [Section 15.05](#), shall execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to the Securities of such series. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee in connection with this Indenture or the Securities of such series. Notwithstanding the satisfaction and discharge of this Indenture with respect to the Securities of any series or of all series, the obligations of the Company to the Trustee under [Section 7.06](#) shall survive.

The Company will deliver to the Trustee an Officer's Certificate and an Opinion of Counsel which together shall state that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

**Section 12.02** *Deposited Moneys to be Held in Trust by Trustee.*

Subject to the provisions of clause (e) of [Section 4.03](#), all moneys deposited with the Trustee pursuant to [Section 12.01](#) shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company acting as its own paying agent), to the persons entitled thereto, of all sums due and to become due thereon for principal and interest (and premium, if any) for which payment of such money has been deposited with the Trustee.

**Section 12.03** *Paying Agent to Repay Moneys Held.*

In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series and the payment of all amounts due to the Trustee under [Section 7.06](#), all moneys with respect to such Securities then held by any paying agent under the provisions of this Indenture shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

**Section 12.04** *Return of Unclaimed Moneys.*

Subject to applicable law, any moneys deposited with or paid to the Trustee or any paying agent for the payment of the principal of (and premium, if any) or interest on any Security and not applied but remaining unclaimed for two years after the date upon which such principal (and premium, if any, on) or interest shall have become due and payable, shall be repaid to the Company by the Trustee or such paying agent upon written request from the Company, and the holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for any payment which such holder may be entitled to collect and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.

**ARTICLE 13**  
**IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS**

**Section 13.01** *Indenture and Securities Solely Corporate Obligations.*

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any incorporator, or against any past, present or future stockholder, officer or director, as such, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the holders thereof and as part of the consideration for the issue of the Securities.

**ARTICLE 14**  
**DEFEASANCE AND COVENANT DEFEASANCE**

**Section 14.01** *Applicability of Article.*

Unless, as specified pursuant to Section 2.03(c), provision is made that either or both of (a) defeasance of the Securities of a series under Section 14.02 and (b) covenant defeasance of the Securities of a series under Section 14.03 shall not apply to the Securities of a series, then the provisions of such Section 14.02 and Section 14.03, together with Section 14.04 and Section 14.05, shall be applicable to the Outstanding Securities of all series upon compliance with the conditions set forth below in this Article 14.

**Section 14.02** *Defeasance and Discharge.*

Subject to Section 14.05, the Company may cause itself to be discharged from its obligations with respect to the Outstanding Securities of any series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, “**defeasance**”). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of such series and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (a) the rights of holders of Outstanding Securities of such series to receive, solely from the trust fund described in Section 14.04 and as more fully set forth in such Section, payments of the principal of and any premium and interest on such Securities when such payments are due, (b) the Company’s obligations with respect to such Securities under Section 2.07, Section 2.08, Section 2.09, Section 4.02 and Section 4.03 and such obligations as shall be ancillary thereto, (c) the rights, powers, trusts, duties, immunities and other provisions in respect of the Trustee hereunder, and (D) this Article 14. Subject to compliance with this Article 14, defeasance with respect to Securities of a series by the Company is permitted under this Section 14.02 notwithstanding the prior exercise of its rights under Section 14.03 with respect to the Securities of such series. Following a defeasance, payment of the Securities of such series may not be accelerated because of an Event of Default.

**Section 14.03** *Covenant Defeasance.*

The Company may cause itself to be released from its obligations under any Sections applicable to Securities of a series that are determined pursuant to Section 2.03(b) to be subject to this provision with respect to the Outstanding Securities of such series on and after the date the conditions precedent set forth below are satisfied but subject to satisfaction of the conditions subsequent set forth below (hereinafter, “**covenant defeasance**”). For this purpose, such covenant defeasance means that, with respect to the Outstanding Securities of such series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section, whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities shall be unaffected thereby.

**Section 14.04** *Conditions to Defeasance or Covenant Defeasance.*

The following shall be the conditions precedent or, as specifically noted below, subsequent to application of either Section 14.02 or Section 14.03 to the Outstanding Securities of such series:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the holders of such Securities, (i) money in an amount, or (ii) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination thereof, sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, (1) the principal of and any premium and interest on the Outstanding Securities of such series to maturity or redemption, as the case may be, and (2) any mandatory sinking fund payments or analogous payments applicable to the Outstanding Securities of such series on the due dates thereof. Before such a deposit the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date or dates in accordance with Article 3 which shall be given effect in applying the foregoing. For this purpose, “**U.S. Government Obligations**” means securities that are (x) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (y) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt;

(b) No default, or event that after notice or lapse of time, or both, would become a default with respect to the Securities of such series, shall have happened and be continuing (i) on the date of such deposit or (ii) insofar as Section 6.01(a) and Section 6.01(b) are concerned, at any time during the period ending on the 123rd day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period applicable to the Company in respect of such deposit (it being understood that the condition in this clause (b) is a condition subsequent and shall not be deemed satisfied until the expiration of such period);

(c) Such defeasance or covenant defeasance shall not (i) cause the Trustee for the Securities of such series to have a conflicting interest as defined in Section 7.08 or for purposes of the Trust Indenture Act with respect to any securities of the Company or (ii) result in the trust arising from such deposit to constitute, unless it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended;

(d) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(e) Such defeasance or covenant defeasance shall not cause any Securities of such series then listed on any registered national securities exchange under the Exchange Act to be delisted;

(f) In the case of a defeasance under Section 14.02, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(g) In the case of covenant defeasance under Section 14.03, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

(h) Such defeasance or covenant defeasance shall be effected in compliance with any additional terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 2.03(b); and

(i) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent and subsequent provided for in this Indenture relating to either the defeasance under Section 14.02 or the covenant defeasance under Section 14.03, as the case may be, have been complied with.

**Section 14.05** *Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.*

All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 14.04 in respect of the Outstanding Securities of such series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any paying agent (but not including the Company acting as its own paying agent) as the Trustee may determine, to the holders of such Securities of all sums due and to become due thereon in respect of principal and any premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the money or U.S. Government Obligations deposited pursuant to Section 14.04 or the principal and interest received in respect thereof.

Anything herein to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 14.04 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent defeasance or covenant defeasance, provided that the Trustee shall not be required to liquidate any U.S. Government Obligations in order to comply with the provisions of this paragraph.

Anything herein to the contrary notwithstanding, if and to the extent the deposited money or U.S. Government Obligations (or the proceeds thereof) either (i) cannot be applied by the Trustee in accordance with this Section because of a court order or by operation of Article 16 or (ii) are for any reason insufficient in amount, then the Company's obligations to pay principal of and any premium and interest on the Securities of such series shall be reinstated to the extent necessary to cover the deficiency on any due date for payment. In any such case, the Company's interest in the deposited money and U.S. Government Obligations (and proceeds thereof) shall be reinstated to the extent the Company's payment obligations are reinstated.

**ARTICLE 15**  
**MISCELLANEOUS PROVISIONS**

**Section 15.01** *Benefits of Indenture Restricted to Parties and Securityholders.*

Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any person, firm or corporation, other than the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of Senior Indebtedness), any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and assigns and the holders of the Securities (and, with respect to the provisions of Article 16, the holders of Senior Indebtedness).

**Section 15.02** *Provisions Binding on Company's Successors.*

All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

**Section 15.03** *Addresses for Notices, etc., to Company and Trustee.*

Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Indenture is duly given if in writing and delivered in person or delivered by first-class postage prepaid mail, facsimile, email or overnight air courier guaranteeing next day delivery, to the other's address:

(1) If to the Trustee, addressed to the Trustee at the principal Corporate Trust Office of the Trustee, U.S. Bank National Association, 333 Commerce Street, Suite 800, Nashville, Tennessee 37201, Attention: Wally Jones, CCTP, Vice President, U.S. Bank Global Corporate Trust, Telephone: (615) 251-0733.

(2) If to the Company by the Trustee or by the holders of Securities, addressed to it at 275 Seventh Avenue, New York, New York 10001, attention of Deborah Silodor, Executive Vice President and General Counsel.

The Company or the Trustee by written notice to the other may designate additional or different addresses for subsequent notices or communications.

All notices and communications will be deemed to have been duly given: five Business Days after being deposited in the mail, postage prepaid, if delivered by mail; on the first Business Day after being sent, if sent by facsimile and the sender receives confirmation of successful transmission; upon confirmation of transmittal (but excluding any automatic reply to such email), if sent by email; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

**Section 15.04** *Notice to Holders of Securities; Waiver.*

Except as otherwise expressly provided herein, where this Indenture provides for notice of holders of Securities of any event, such notice shall be sufficiently given to holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each holder of a Registered Security affected by such event, at the address of such holder as it appears in the Security Register, not earlier than the earliest date, and not later than the latest date, prescribed for the giving of such notice.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to holders of Registered Securities by mail, then such notification as shall be made with the approval of the Trustee shall constitute sufficient notice to such holders for every purpose hereunder. In any case where notice to holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular holder of a Registered Security shall affect the sufficiency of such notice with respect to other holders of Registered Securities.

Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of redemption) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given when delivered to the Depositary for such Security (or its designee) pursuant to the customary procedures of such Depositary.



Where this Indenture provides for notice in any manner, such notice may be waived in writing by the person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by holders of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any request, demand, authorization, direction, notice, consent or waiver required or permitted under this Indenture shall be in the English language.

**Section 15.05** *Evidence of Compliance with Conditions Precedent.*

Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each Officer's Certificate and Opinion of Counsel provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

**Section 15.06** *Legal Holidays.*

In any case where the date of maturity of interest on or principal of the Securities or the date fixed for redemption of any Securities shall be a Saturday or Sunday or a legal holiday in City of New York, New York or in such other Place of Payment as the Company may designate pursuant to Section 4.02, or a day on which banking institutions in City of New York, New York or in such other Place of Payment are authorized or obligated by law, regulation or executive order to remain closed, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**Section 15.07** *Trust Indenture Act to Control.*

If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included in this Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act, such required provision shall control.

**Section 15.08** *Execution in Counterparts.*

This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or electronic format (e.g., “.pdf” or “.tif”) transmission will constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or electronic format (e.g., “.pdf” or “.tif”) will be deemed to be their original signatures for all purposes. Unless otherwise provided herein or in any other Securities, the words “execute”, “execution”, “signed”, and “signature” and words of similar import used in or related to any document to be signed in connection with this Indenture, any other Securities or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other similar state laws based on the Uniform Electronic Transactions Act, provided that, notwithstanding anything herein to the contrary, the Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by such Trustee pursuant to procedures approved by such Trustee.

**Section 15.09** *Governing Law; Waiver of Jury Trial.*

**THIS INDENTURE AND EACH SECURITY SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW). EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

The parties hereby (i) irrevocably submit to the non-exclusive jurisdiction of any federal or state court sitting in the Borough of Manhattan, the city of New York, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party.

**Section 15.10 Severability; Entire Agreement.**

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The Trustee, by its execution of this Indenture, hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth. This Indenture, any supplemental indenture hereto and the exhibits hereto or thereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written.

**Section 15.11 Interpretations.**

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

**Section 15.12 U.S.A. Patriot Act.**

The parties hereto acknowledge that in accordance with Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the “USA PATRIOT Act”), the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

**ARTICLE 16  
SUBORDINATION OF SECURITIES**

**Section 16.01 Securities Subordinate to Senior Indebtedness.**

Except as otherwise provided in a supplemental indenture or pursuant to Section 2.03, the Company agrees, and each holder by accepting a Security agrees, that the indebtedness evidenced by the Securities is subordinated in right of payment, to the extent and in the manner provided in this Article, to the prior payment in full of all Senior Indebtedness and that the subordination is for the benefit of the holders of Senior Indebtedness. Notwithstanding the foregoing, if a deposit is made pursuant to Section 14.02 or Section 14.03 with respect to any Securities (and provided all other conditions set out in Section 14.02 or 14.03, as applicable, shall have been satisfied with respect to such Securities), then, when the 90th day after such deposit has ended, no money obligations so deposited, and no proceeds thereon, will be subject to any rights of holders of Senior Indebtedness, including any such rights arising under this Article 16.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of the day and year first above written.

**AMALGAMATED FINANCIAL CORP.**

By: /s/ Priscilla Sims Brown

Priscilla Sims Brown

President and Chief Executive Officer

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

By: /s/ Wally Jones

Wally Jones

Vice President

**AMALGAMATED FINANCIAL CORP.,**

**AS ISSUER,**

**AND**

**U.S. BANK NATIONAL ASSOCIATION,**

**AS TRUSTEE,**

**FIRST SUPPLEMENTAL INDENTURE**

**DATED AS OF NOVEMBER 8, 2021**

**TO**

**SUBORDINATED INDENTURE**

**DATED AS OF NOVEMBER 8, 2021**

**3.250% FIXED-TO-FLOATING RATE SUBORDINATED NOTES DUE 2031**

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## TABLE OF CONTENTS

	Page	
<u>ARTICLE 1</u>	<u>DEFINITIONS</u>	1
<u>Section 1.1</u>	<u>Relation to Base Indenture.</u>	1
<u>Section 1.2</u>	<u>Definition of Terms.</u>	1
<u>ARTICLE 2</u>	<u>ESTABLISHMENT OF THE 2031 SERIES AND GENERAL TERMS AND CONDITIONS OF THE NOTES</u>	8
<u>Section 2.1</u>	<u>Establishment of the Series of the Notes and Designation.</u>	8
<u>Section 2.2</u>	<u>Maturity.</u>	9
<u>Section 2.3</u>	<u>Form, Payment and Appointment.</u>	9
<u>Section 2.4</u>	<u>Global Note.</u>	9
<u>Section 2.5</u>	<u>Interest.</u>	9
<u>Section 2.6</u>	<u>Subordination.</u>	12
<u>Section 2.7</u>	<u>Events of Default; Acceleration.</u>	15
<u>Section 2.8</u>	<u>No Sinking Fund.</u>	15
<u>Section 2.9</u>	<u>No Conversion or Exchange Rights.</u>	15
<u>Section 2.10</u>	<u>No Defeasance or Covenant Defeasance.</u>	15
<u>ARTICLE 3</u>	<u>REDEMPTION OF THE NOTES</u>	16
<u>Section 3.1</u>	<u>Optional Redemption.</u>	16
<u>Section 3.2</u>	<u>Redemption of Special Events.</u>	16
<u>Section 3.3</u>	<u>Notice to Trustee.</u>	16
<u>Section 3.4</u>	<u>Partial Redemption.</u>	16
<u>Section 3.5</u>	<u>Notice to Holders.</u>	16
<u>ARTICLE 4</u>	<u>FORM OF NOTES</u>	17
<u>Section 4.1</u>	<u>Form of Notes.</u>	17
<u>ARTICLE 5</u>	<u>ARTICLE 8 SUPPLEMENTAL INDENTURES</u>	17
<u>Section 5.1</u>	<u>Supplemental Indentures without Consent of Holders.</u>	17
<u>ARTICLE 6</u>	<u>IMMUNITY OF STOCKHOLDERS, EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS</u>	18
<u>Section 6.1</u>	<u>Indenture and Notes Solely Corporate Obligations.</u>	18
<u>ARTICLE 7</u>	<u>MISCELLANEOUS</u>	18
<u>Section 7.1</u>	<u>Ratification of Base Indenture.</u>	18
<u>Section 7.2</u>	<u>Trustee Not Responsible for Recitals.</u>	18
<u>Section 7.3</u>	<u>New York Law To Govern.</u>	18
<u>Section 7.4</u>	<u>Severability.</u>	18
<u>Section 7.5</u>	<u>Counterparts.</u>	18
<u>Section 7.6</u>	<u>Benefits of First Supplemental Indenture.</u>	18
<u>Section 7.7</u>	<u>Conflict with Base Indenture.</u>	19
<u>Section 7.8</u>	<u>Provisions of Trust Indenture Act Controlling.</u>	19
<u>Section 7.9</u>	<u>Successors.</u>	19

THIS FIRST SUPPLEMENTAL INDENTURE (this “**First Supplemental Indenture**”), dated as of November 8, 2021, between AMALGAMATED FINANCIAL CORP., a public benefit corporation duly incorporated and existing under the laws of the State of Delaware (the “**Company**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States, as Trustee (in such capacity, the “**Trustee**”), under the Base Indenture (as hereinafter defined).

## RECITALS

WHEREAS, the Company and the Trustee have heretofore executed and delivered the Subordinated Indenture, dated as of November 8, 2021 (the “**Base Indenture**” and, as hereby supplemented and amended, the “**Indenture**”), providing for the establishment from time to time of one or more series (each, a “**Series**”) of securities evidencing indebtedness of the Company (hereinafter called the “**Securities**”), and the issuance by the Company from time to time of Securities under the Indenture;

WHEREAS, Section 10.01(c) of the Base Indenture provides that the Company and the Trustee may enter into an indenture supplemental to the Base Indenture to establish a Series of Securities thereunder and the form and terms, provisions and conditions of such Series of Securities as permitted by Section 2.01 and Section 2.03 of the Base Indenture;

WHEREAS, pursuant to Section 2.01 of the Base Indenture, the Company desires to establish a new Series of Securities under the Indenture to be known as its “3.250% Fixed-to-Floating Rate Subordinated Notes Due 2031” (the “**2031 Series**”) and to establish and set the form and terms, provisions and conditions of the notes of the 2031 Series (the “**Notes**”), as provided in this First Supplemental Indenture and to provide for the initial issuance of Notes of the 2031 Series in the aggregate principal amount of \$85,000,000; and

WHEREAS, the Company (i) has requested that the Trustee execute and deliver this First Supplemental Indenture, (ii) confirms all requirements necessary to make this First Supplemental Indenture a valid, binding and enforceable instrument in accordance with its terms, and to make the Notes, when executed by the Company and authenticated and delivered by the Trustee in accordance with this Indenture, the valid, binding and enforceable obligations of the Company, have been satisfied and (iii) confirms that the execution and delivery of this First Supplemental Indenture has been duly authorized in all respects.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE 1 DEFINITIONS

**Section 1.1** Relation to Base Indenture. This First Supplemental Indenture constitutes an integral part of, and amends and supplements, the Base Indenture as set forth herein.

**Section 1.2** Definition of Terms. For all purposes of this First Supplemental Indenture:

(a) Capitalized terms used herein without definition shall have the meanings set forth in the Base Indenture, provided that if the definition of a capitalized term defined in this First Supplemental Indenture conflicts with the definition of that capitalized term in the Base Indenture, the definition of that capitalized term in this First Supplemental Indenture shall control for purposes of this First Supplemental Indenture and the Notes;

(b) a term defined anywhere in this First Supplemental Indenture has the same meaning throughout this First Supplemental Indenture;

(c) the singular includes the plural and vice versa;

(d) headings are for convenience of reference only and do not affect interpretation;

(e) unless otherwise specified or unless the context requires otherwise, (i) all references in this First Supplemental Indenture to Sections refer to the corresponding Sections of this First Supplemental Indenture and (ii) the terms “herein,” “hereof,” “hereunder” and any other word of similar import refer to this First Supplemental Indenture; and

(f) for purposes of this First Supplemental Indenture and the Notes, the following terms have the meanings given to them in this Section 1.2(f):

“**2031 Series**” shall have the meaning set forth in the Recitals.

“**Authenticating Agent**” means any Person authorized by the Trustee pursuant to Section 7.15 of the Base Indenture to act on behalf of the Trustee to authenticate the Notes.

“**Base Indenture**” shall have the meaning set forth in the Recitals.

“**Benchmark**” means, initially, Three-Month Term SOFR, provided that, if the Calculation Agent determines on or prior to the Reference Time for any Floating Rate Interest Period that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement for such Floating Rate Interest Period and any subsequent Floating Rate Interest Periods.

“**Benchmark Replacement**” means the Interpolated Benchmark with respect to the then-current Benchmark, plus the Benchmark Replacement Adjustment for such Benchmark, provided that, if (a) the Calculation Agent cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date or (b) the then-current Benchmark is Three-Month Term SOFR and a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR (in which event no Interpolated Benchmark with respect to Three-Month Term SOFR shall be determined), then “Benchmark Replacement” means the first alternative set forth in the order below that can be determined by the Calculation Agent as of the Benchmark Replacement Date:

(1) Compounded SOFR;

(2) the sum of: (a) the alternate rate that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (b) the Benchmark Replacement Adjustment;

(3) the sum of: (a) the ISDA Fallback Rate and (b) the Benchmark Replacement Adjustment; or

(4) the sum of: (a) the alternate rate that has been selected by the Calculation Agent as the replacement for the then-current Benchmark for the applicable Corresponding Tenor, giving due consideration to any industry-accepted rate as a replacement for the then-current Benchmark for Dollar-denominated floating rate securities at such time, and (b) the Benchmark Replacement Adjustment.

“**Benchmark Replacement Adjustment**” means the first alternative set forth in the order below that can be determined by the Calculation Agent as of the Benchmark Replacement Date:

(1) the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero), that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;

(2) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment; or



(3) the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Calculation Agent giving due consideration to any industry-accepted spread adjustment or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated floating rate securities at such time.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative, or operational changes (including, without limitation, changes to the definition of **“Floating Rate Interest Period,”** timing and frequency of determining rates with respect to each Floating Rate Interest Period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Calculation Agent determines may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Calculation Agent determines that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Calculation Agent determines is reasonably necessary).

**“Benchmark Replacement Date”** means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) of the definition of **“Benchmark Transition Event,”** the relevant Reference Time in respect of any determination;

(2) in the case of clause (2) or (3) of the definition of **“Benchmark Transition Event,”** the later of the date of the public statement or publication of information referenced therein and the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or

(3) in the case of clause (4) of the definition of **“Benchmark Transition Event,”** the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

**“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) if the Benchmark is Three-Month Term SOFR, (a) the Relevant Governmental Body has not selected or recommended a forward-looking term rate for a tenor of three months based on SOFR, (b) the development of a forward-looking term rate for a tenor of three months based on SOFR that has been recommended or selected by the Relevant Governmental Body is not complete or (c) the Company determines that the use of a forward-looking rate for a tenor of three months based on SOFR is not administratively feasible;

(2) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or

(4) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

“**Business Day**” means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions or trust companies in the City of New York, New York or any Place of Payment are authorized or obligated by law, regulation, or executive order to close or remain closed.

“**Calculation Agent**” means the Person appointed by the Company prior to the commencement of the Floating Rate Period (which may include the Company or any of its affiliates) to act in accordance with [Section 2.5](#). The Company shall initially act as the Calculation Agent.

“**Company**” shall have the meaning set forth in the Preamble.

“**Compounded SOFR**” means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate being established by the Calculation Agent in accordance with:

(1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining Compounded SOFR; provided that:

(2) if, and to the extent that, the Calculation Agent determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by the Calculation Agent giving due consideration to any industry-accepted market practice for Dollar-denominated floating rate securities at such time.

For the avoidance of doubt, the calculation of Compounded SOFR shall exclude the Benchmark Replacement Adjustment and the spread specified herein.

“**Corresponding Tenor**” means (i) with respect to Term SOFR, three months, and (ii) with respect to a Benchmark Replacement, a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the then-current Benchmark.

“**DTC**” shall have the meaning set forth in [Section 2.3](#) hereof.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System or any successor regulatory authority with jurisdiction over bank holding companies.

“**First Supplemental Indenture**” shall have the meaning set forth in the Preamble.

“**Fixed-Period Interest Payment Date**” shall have the meaning set forth in [Section 2.5\(a\)](#) hereof.

“**Fixed Rate Period**” shall have the meaning set forth in [Section 2.5\(a\)](#) hereof.

“**Floating Period Interest Payment Date**” shall have the meaning set forth in [Section 2.5\(b\)](#) hereof.

“**Floating Rate Interest Period**” means the period from and including the immediately preceding Floating Period Interest Payment Date in respect of which interest has been paid or duly provided for, to, but excluding, the applicable Floating Period Interest Payment Date or Maturity Date or Redemption Date, if applicable (except that the first Floating Rate Interest Period will commence on November 15, 2026).

“**Floating Rate Period**” shall have the meaning set forth in [Section 2.5\(b\)](#) hereof.

“**FRBNY’s Website**” means the website of the Federal Reserve Bank of New York (the “**FRBNY**”) at <http://www.newyorkfed.org>, or any successor source.

“**Global Note**” shall have the meaning set forth in [Section 2.4](#) hereof.

“**Indenture**” shall have the meaning set forth in the Recitals.

“**Independent Bank Regulatory Counsel**” means a law firm, a member of a law firm or an independent practitioner that is experienced in matters of federal bank holding company and banking regulatory law, including the laws, rules and guidelines of the Federal Reserve Board relating to regulatory capital, and shall include any Person who, under the standards of professional conduct then prevailing and applicable to such counsel, would not have a conflict of interest in representing the Company or the Trustee in connection with providing the legal opinion contemplated by the definition of the term “**Tier 2 Capital Event**.”

“**Independent Tax Counsel**” means a law firm, a member of a law firm or an independent practitioner that is experienced in matters of federal income taxation law, including the deductibility of interest payments made with respect to corporate debt instruments, and shall include any Person who, under the standards of professional conduct then prevailing and applicable to such counsel, would not have a conflict of interest in representing the Company or the Trustee in connection with providing the legal opinion contemplated by the definition of the term “**Tax Event**.”

“**Interest Payment Date**” shall have the meaning set forth in [Section 2.5\(b\)](#) hereof.

“**Interpolated Benchmark**” with respect to the Benchmark means the rate determined by the Calculation Agent for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor, and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.

“**ISDA**” means the International Swaps and Derivatives Association, Inc. or any successor.

“**ISDA Definitions**” means the 2006 ISDA Definitions published by ISDA, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

“**ISDA Fallback Adjustment**” means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.

“**ISDA Fallback Rate**” means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

“**Maturity Date**” shall have the meaning set forth in [Section 2.2](#) hereof.

“**Notes**” shall have the meaning set forth in the Recitals.

“**Optional Redemption**” shall have the meaning set forth in [Section 3.1](#) hereof.

“**Paying Agent**” means any Person authorized by the Company, including the Company, to pay the principal of, or any premium or interest on, the Notes on behalf of the Company.

“**Redemption Date**” means each date, if any, on which Notes are redeemed pursuant to the redemption provisions of [Section 3.1](#) or [Section 3.2](#) hereof.

“**Reference Time**” with respect to any determination of the Benchmark means (i) if the Benchmark is Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions, and (ii) if the Benchmark is not Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Benchmark Replacement Conforming Changes.

“**Relevant Governmental Body**” means the Federal Reserve Board and/or the FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or the FRBNY or any successor thereto.

“**Securities**” shall have the meaning set forth in the Recitals.

“**Senior Indebtedness**” means the principal of, and premium, if any, and interest, including interest accruing after the commencement of any bankruptcy proceeding relating to the Company, on, or substantially similar payments the Company makes in respect of the following categories of debt, whether that debt is outstanding on the date of execution of this First Supplemental Indenture or thereafter incurred, created or assumed:

- (1) indebtedness evidenced by notes, debentures, or bonds or other securities issued under the provisions of any indenture, fiscal agency agreement, debenture or note purchase agreement or other agreement, including any senior debt securities that may be offered, including by means of a base prospectus and one or more prospectus supplements;
- (2) indebtedness for money borrowed or represented by purchase-money obligations, as defined below;
- (3) indebtedness to general creditors;
- (4) obligations as lessee under leases of property whether made as part of a sale and leaseback transaction to which the Company is a party or otherwise;
- (5) indebtedness, obligations and liabilities of others in respect of which the Company is liable contingently or otherwise to pay or advance money or property or as guarantor, endorser or otherwise or which the Company has agreed to purchase or otherwise acquire and indebtedness of partnerships and joint ventures that is included in the Company’s consolidated financial statements;
- (6) reimbursement and other obligations relating to letters of credit, bankers’ acceptances and similar obligations;
- (7) obligations under various hedging arrangements and agreements, including interest rate and currency hedging agreements and swap and nonswap forward agreements;
- (8) all of the Company’s obligations issued or assumed as the deferred purchase price of property or services, but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business; and
- (9) deferrals, renewals or extensions of any of the indebtedness or obligations described in the clauses above.

However, “Senior Indebtedness” excludes:

- (1) any indebtedness, obligation or liability referred to in the definition of Senior Indebtedness above as to which, in the instrument creating, governing or evidencing that indebtedness, obligation or liability, it is expressly provided that such indebtedness, obligation or liability is not senior in right of payment to, is junior in right of payment to, or ranks equally in right of payment with, other specified types of indebtedness, obligations and liabilities of the Company, which other specified types of indebtedness, obligations and liabilities of the Company include the Notes;

(2) any indebtedness, obligation or liability that is subordinated to other of the Company's indebtedness, obligations or liabilities to substantially the same extent as or to a greater extent than the Notes are subordinated;

(3) all obligations to trade creditors created or assumed by the Company in the ordinary course of business; and

(4) the Notes and any other securities issued pursuant to the Indenture and the Company's outstanding junior subordinated debentures and, unless expressly provided in the terms thereof, any of the Company's indebtedness to the Company's subsidiaries.

As used above, the term "**purchase-money obligations**" means indebtedness, obligations evidenced by a note, debenture, bond or other instrument, whether or not secured by a lien or other security interest, issued to evidence the obligation to pay or a guarantee of the payment of, and any deferred obligation for the payment of, the purchase price of property but excluding indebtedness or obligations for which recourse is limited to the property purchased, issued or assumed as all or a part of the consideration for the acquisition of property or services, whether by purchase, merger, consolidation or otherwise, but does not include any trade accounts payable.

Notwithstanding the foregoing, if the Federal Reserve Board (or other competent regulatory agency or authority) promulgates any rule or issues any interpretation that defines general creditor(s), the main purpose of which is to establish criteria for determining whether the subordinated debt of a bank holding company is to be included in its capital, then the term "general creditors" as used in this definition of "Senior Indebtedness" in this First Supplemental Indenture will have the meaning as described in that rule or interpretation.

"**SOFR**" means the secured overnight financing rate published by the FRBNY, as the administrator of the Benchmark (or any successor administrator), on the FRBNY's Website.

"**Tax Event**" shall mean the receipt by the Company of an opinion of Independent Tax Counsel to the effect that:

(1) an amendment to or change (including any announced prospective amendment or change) in any law, treaty, statute or code, or any regulation thereunder, of the United States or any of its political subdivisions or taxing authorities;

(2) a judicial decision, administrative action, official administrative pronouncement, ruling, regulatory procedure, regulation, notice or announcement, including any notice or announcement of intent to adopt or promulgate any ruling, regulatory procedure or regulation (any of the foregoing, an "**administrative or judicial action**");

(3) an amendment to or change in any official position with respect to, or any interpretation of, an administrative or judicial action or a law or regulation of the United States that differs from the previously generally accepted position or interpretation; or

(4) a threatened challenge asserted in writing in connection with an audit of the Company's federal income tax returns or positions or a similar audit of any of its Subsidiaries, or a publicly known threatened challenge asserted in writing against any other taxpayer that has raised capital through the issuance of securities that are substantially similar to the Notes, in each case, occurring or becoming publicly known on or after the date of original issuance of the Notes, has resulted in more than an insubstantial increase in the risk that the interest paid by the Company on the Notes is not, or within 90 days of receipt of such opinion of tax counsel, will not be, deductible by the Company, in whole or in part, for U.S. federal income tax purposes.

"**Term SOFR**" means the forward-looking term rate for the applicable Corresponding Tenor based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Term SOFR Administrator**” means any entity designated by the Relevant Governmental Body as the administrator of Term SOFR (or any successor administrator).

“**Three-Month Term SOFR**” means the rate for Term SOFR for a tenor of three months that is published by the Term SOFR Administrator at the Reference Time for any Floating Rate Interest Period, as determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions. All percentages used in or resulting from any calculation of Three-Month Term SOFR shall be rounded, if necessary, to the nearest one-hundred-thousandth of a percentage point, with 0.000005% rounded up to 0.00001%.

“**Three-Month Term SOFR Conventions**” means any determination, decision, or election with respect to any technical, administrative, or operational matter (including with respect to the manner and timing of the publication of Three-Month Term SOFR, or changes to the definition of “Floating Rate Interest Period,” timing and frequency of determining Three-Month Term SOFR with respect to each Floating Rate Interest Period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Calculation Agent determines may be appropriate to reflect the use of Three-Month Term SOFR as the Benchmark in a manner substantially consistent with market practice (or, if the Calculation Agent determines that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for the use of Three-Month Term SOFR exists, in such other manner as the Calculation Agent determines is reasonably necessary).

“**Tier 2 Capital Event**” shall mean the receipt by the Company of an opinion of Independent Bank Regulatory Counsel to the effect that, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws or any regulations thereunder of the United States or any rules, guidelines or policies of an applicable regulatory authority for the Company or (b) any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which pronouncement or decision is announced on or after the date of original issuance of the Notes, the Notes do not constitute, or within 90 days of the date of such opinion will not constitute, Tier 2 capital (or its then equivalent if the Company were subject to such capital requirement) for purposes of capital adequacy guidelines of the Federal Reserve Board (or any successor regulatory authority with jurisdiction over bank holding companies), as then in effect and applicable to the Company.

“**Trustee**” shall have the meaning set forth in the Preamble.

“**U.S. Dollars**” means such currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts.

“**Unadjusted Benchmark Replacement**” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

**ARTICLE 2**  
**ESTABLISHMENT OF THE 2031 SERIES**  
**AND GENERAL TERMS AND CONDITIONS OF THE NOTES**

**Section 2.1**      *Establishment of the Series of the Notes and Designation.*

(a)                There is hereby authorized and established a Series of Securities designated as the “3.250% Fixed-to-Floating Rate Subordinated Notes Due 2031,” which Series of Securities is unsecured, subordinated to the Senior Indebtedness of the Company as provided herein and unlimited in the aggregate principal amount that may be issued. The Notes initially issued pursuant to the terms of the Indenture shall be in an aggregate principal amount of \$85,000,000 which amount shall be set forth in a Company Order pursuant to Article 2 of the Base Indenture, and the Trustee shall thereupon authenticate and deliver said Notes in accordance with such Company Order and the Indenture, including Section 2.06 of the Base Indenture. The Securities that are a part of such Series of Securities shall be in the form and have the terms, provisions and conditions as set forth in the Base Indenture, this First Supplemental Indenture and the Notes in the form attached hereto as Exhibit A.

(b) The Company may, from time to time, without notice to, or the consent of, the holders of the Notes, issue additional Securities ranking equally with the Notes and identical to the Notes issued on the date hereof in all respects (except for the issue date, the offering price, the payment of interest accruing prior to the issue date of such additional Securities and the first payment of interest following the issue date of such additional Securities) in order that such additional Securities may be consolidated and form a single series with the Notes and have the same terms as to status, redemption or otherwise as the Notes. However, any additional Securities of the series of which the Notes are a part that are issued and are not fungible with the outstanding Notes of such series for United States federal income tax purposes will be issued under one or more separate CUSIP numbers and ISIN numbers. No limit exists on the aggregate principal amount of the additional Securities of this series that the Company may issue in the future.

**Section 2.2** Maturity. The date upon which the Notes shall become due and payable at final maturity, together with any accrued and unpaid interest then owing, is November 15, 2031 (the “**Maturity Date**”).

**Section 2.3** Form, Payment and Appointment. Except as provided in Section 2.07(d) of the Base Indenture, the Notes will be issued only in book-entry form, will be represented by one or more Global Notes (as defined below) registered in the name of or held by The Depository Trust Company (and any successor organization thereto) (“**DTC**”) or its nominee. Principal or the redemption price, if any, of a Note shall be payable to the Person in whose name that Note is registered on the Maturity Date or Redemption Date, as the case may be, provided that the redemption price, if any, principal of and interest on the Notes represented by one or more Global Notes (as hereinafter defined) registered in the name of or held by DTC or its nominee will be payable in immediately available funds to DTC or its nominee, as the case may be, as the registered holder of such Global Notes. The principal of any certificated Notes will be payable at the Place of Payment set forth below.

The Notes shall have such other terms as are set forth in the form thereof attached hereto as Exhibit A, which is incorporated herein and made a part hereof.

The Security Registrar, Authenticating Agent, and Paying Agent for the Notes shall initially be the Trustee. The Company will appoint a Person to act as the Calculation Agent as provided under the definition of Calculation Agent and Section 2.5.

The Place of Payment for the Notes shall be an office or agency of the Company maintained for such purpose, which shall initially be the Corporate Trust Office of the Trustee.

The Notes will be issued and may be transferred only in minimum denominations of \$1,000 or any amount in excess thereof that is an integral multiple of \$1,000. The Company will pay principal of and interest on the Notes in U.S. Dollars.

**Section 2.4** Global Note. The Notes shall be issued initially in the form of one or more fully registered global notes (each such global note, a “**Global Note**”) registered in the name of DTC or its nominee and deposited with DTC or its designated custodian or such other Depository as any Authorized Officer of the Company may from time to time designate. Unless and until a Global Note is exchanged for definitive certificated Notes, such Global Note may be transferred, in whole but not in part, and any payments on the Notes shall be made, only to DTC or a nominee of DTC, or to a successor Depository selected or approved by the Company or to a nominee of such successor Depository as provided in the Indenture.

**Section 2.5** Interest.

(a) From and including November 8, 2021, to, but excluding, November 15, 2026 (unless redeemed prior to such date pursuant to Section 3.2 hereof) (the “**Fixed Rate Period**”), the Notes will bear interest at a rate of 3.250% per year. During the Fixed Rate Period, interest on the Notes will accrue from and including November 8, 2021, and will be payable semiannually in arrears on May 15 and November 15 of each year during the Fixed Rate Period, commencing on May 15, 2022 (each such date, a “**Fixed Period Interest Payment Date**”). The interest payable on the Notes on any Fixed Period Interest Payment Date will be paid to the holder at the close of business on the on May 1 and November 1 (whether or not a business day), as applicable, immediately preceding the applicable Fixed Period Interest Payment Date through November 15, 2026.

(b) From and including November 15, 2026, to, but excluding, the Maturity Date (unless redeemed prior to such date pursuant to [Section 3.1](#) or [Section 3.2](#) hereof) (the “**Floating Rate Period**”), the Notes will bear interest at a floating rate per year equal to the Benchmark, plus 230 basis points. During the Floating Rate Period, interest on the Notes will accrue from and including November 15, 2026 and will be payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year, commencing on February 15, 2027 (each such date, a “**Floating Period Interest Payment Date**” and, together with a Fixed Period Interest Payment Date, an “**Interest Payment Date**”). The interest payable on the Notes on any Floating Period Interest Payment Date will, except as noted in the immediately succeeding sentence, be paid to the holder at the close of business on February 1, May 1, August 1, and November 1 of each year (whether or not a business day), as applicable, immediately preceding the applicable Floating Period Interest Payment Date through the Maturity Date or earlier redemption date. However, interest that the Company pays on the Maturity Date will be paid to the Person to whom the principal will be payable. Notwithstanding the foregoing, if the Benchmark is less than zero, then the Benchmark shall be deemed to be zero. The Calculation Agent will provide the Company and the Trustee with written notice of the interest rate in effect on the Notes promptly after the Reference Time (or such other date of determination for the applicable Benchmark) for each Floating Rate Interest Period.

(c) During the Fixed Rate Period, interest will be computed on the basis of a 360-day year consisting of twelve 30-day months. During the Floating Rate Period, interest will be computed on the basis of a 360-day year and the actual number of days elapsed. Dollar amounts resulting from those calculations will be rounded to the nearest cent, with one-half cent being rounded upward.

(d) The Company or the Calculation Agent, as applicable, shall calculate the amount of interest payable on any Interest Payment Date, and the Trustee shall have no duty to confirm or verify any such calculation. If any Fixed Period Interest Payment Date for the Notes or the date for the payment of principal for the Notes occurring during the Fixed Rate Period falls on a day that is not a Business Day, the Company will postpone the interest or principal payment to the next succeeding Business Day, but the payments made on such dates will be treated as being made on the date that the payment was first due and the holders of the Notes will not be entitled to any further interest, principal or other payments with respect to such postponements. If any Floating Period Interest Payment Date or the Maturity Date falls on a day that is not a Business Day, the Company will postpone the interest payment or the payment of principal and interest at the Maturity Date to the next succeeding Business Day (and, with respect to the Maturity Date, no additional interest will accrue on the amount payable for the period from and after the Maturity Date) unless, with respect to a Floating Period Interest Payment Date only, such day falls in the next calendar month, in which case the Floating Period Interest Payment Date will instead be the immediately preceding day that is a Business Day, and interest will accrue to, but excluding, such Floating Period Interest Payment Date as so adjusted.

(e) The Company shall appoint a Calculation Agent prior to the commencement of the Floating Rate Period. The Company will act as the initial Calculation Agent. The calculation of the interest rate for any Floating Rate Interest Period by the Calculation Agent will (in the absence of manifest error) be conclusive and binding upon the beneficial owners and holders of the Notes, the Company (if the Company is not also the Calculation Agent) and the Trustee. The Calculation Agent’s determination of any interest rate, and its calculation of interest payments, for any Floating Rate Interest Period, will be maintained on file at the Calculation Agent’s principal offices, and will be made available to any holder of the Notes upon request. The Calculation Agent shall have all the rights, protections and indemnities afforded to the Trustee under the Indenture. The Company may remove the Calculation Agent at any time. If the Calculation Agent is unable or unwilling to act as Calculation Agent or is removed by the Company, the Company will promptly appoint a replacement Calculation Agent. The Trustee shall not be under any duty to succeed to, assume or otherwise perform, any duties of the Calculation Agent, or to appoint a successor or replacement in the event of the Calculation Agent’s resignation or removal or to replace the Calculation Agent in the event of a default, breach or failure of performance on the part of the Calculation Agent with respect to the Calculation Agent’s duties and obligations under the Indenture. For the avoidance of doubt, if at any time there is no Calculation Agent appointed by the Company, then the Company shall be the Calculation Agent. By its acquisition of the Notes, each holder (including, for the avoidance of doubt, each beneficial owner) acknowledges, accepts, consents to and agrees to be bound by the Company’s and the Calculation Agent’s determination of the interest rate for each Floating Rate Interest Period, including the Company’s and its determination of any Benchmark Replacement Conforming Changes, Benchmark Replacement Date, Benchmark Replacement, Benchmark Replacement Adjustment, and Benchmark Transition Event, including as may occur without any prior notice from the Company or the Calculation Agent and without the need for the Company or it to obtain any further consent from any holder of the Notes.



(f) Effect of Benchmark Transition Event.

(i) If the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred on or prior to the Reference Time in respect of any Floating Rate Interest Period during the Floating Rate Period, then the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to the Notes during such Floating Rate Interest Period and all remaining Floating Rate Interest Periods. In connection with the implementation of a Benchmark Replacement, the Calculation Agent will have the right to make Benchmark Replacement Conforming Changes from time to time.

(ii) Notwithstanding anything set forth in Section 2.5(b) above, if the Calculation Agent determines on or prior to the relevant Reference Time that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR, then the provisions set forth in this Section 2.5(f) will thereafter apply to all determinations of the Benchmark used to calculate the interest rate on the Notes for each Floating Rate Interest Period.

(iii) The Calculation Agent is expressly authorized to make certain determinations, decisions, and elections under the terms of the Notes, including with respect to the use of Three-Month Term SOFR as the Benchmark for the Floating Rate Period and under this Section 2.5(f). Any determination, decision, or election that may be made by the Company or by the Calculation Agent under the terms of the Notes, including any determination with respect to a tenor, rate, or adjustment or of the occurrence or non-occurrence of an event, circumstance, or date and any decision to take or refrain from taking any action or any selection (A) will be conclusive and binding on the holders of the Notes, the Company (if the Company is not also the Calculation Agent) and the Trustee absent manifest error, (B) if made by the Company as Calculation Agent, will be made in the Company's sole discretion, (C) if made by a Calculation Agent other than the Company, will be made after consultation with the Company, and the Calculation Agent will not make any such determination, decision, or election to which the Company reasonably objects and (D) notwithstanding anything to the contrary in the Indenture, shall become effective without consent from the holders of the Notes or the Trustee or any other party. If the Calculation Agent fails to make any determination, decision, or election that it is required to make under the terms of the Notes, then the Company will make such determination, decision, or election on the same basis as described above.

(iv) The Company (or the Calculation Agent) shall notify the Trustee in writing (i) upon the occurrence of the Benchmark Transition Event or the Benchmark Replacement Date, and (ii) of any Benchmark Replacements, Benchmark Replacement Conforming Changes after a Benchmark Transition Event.

(v) The Trustee (including in its capacity as Paying Agent) shall have no (i) responsibility or liability for the (A) Three-Month Term SOFR Conventions, (B) selection of an alternative reference rate to Three-Month Term SOFR (including, without limitation, whether the conditions for the designation of such rate have been satisfied or whether such rate is a Benchmark Replacement or an Unadjusted Benchmark Replacement), (C) determination or calculation of a Benchmark Replacement, or (D) determination of whether a Benchmark Transition Event or Benchmark Replacement Date has occurred, and in each such case under clauses (A) through (D) above shall be entitled to conclusively rely upon the selection, determination, and/or calculation thereof as provided by the Company or its Calculation Agent, as applicable, and (ii) liability for any failure or delay in performing its duties hereunder as a result of the unavailability of a Benchmark rate as described in the definition thereof, including, without limitation, as a result of the Company's or the Calculation Agent's failure to select a Benchmark Replacement or the Calculation Agent's failure to calculate a Benchmark. The Trustee shall be entitled to rely conclusively on all notices from the Company or the Calculation Agent regarding any Benchmark or Benchmark Replacement, including, without limitation, in regards to Three-Month Term SOFR Conventions, a Benchmark Transition Event, Benchmark Replacement Date, and Benchmark Replacement Conforming Changes. The Trustee shall not be responsible or liable for the actions or omissions of the Calculation Agent, or any failure or delay in the performance of the Calculation Agent's duties or obligations, nor shall it be under any obligation to monitor or oversee the performance of the Calculation Agent. The Trustee shall be entitled to rely conclusively on any determination made, and any instruction, notice, Officer's Certificate or other instruction or information provided by the Calculation Agent without independent verification, investigation or inquiry of any kind.

(vi) If the then-current Benchmark is Three-Month Term SOFR, the Calculation Agent will have the right to establish the Three-Month Term SOFR Conventions, and if any of the foregoing provisions concerning the calculation of the interest rate and interest payments during the Floating Rate Period are inconsistent with any of the Three-Month Term SOFR Conventions determined by the Calculation Agent, then the relevant Three-Month Term SOFR Conventions will apply. Furthermore, if the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Three-Month Term SOFR at any time when any of the Notes are outstanding, then the foregoing provisions concerning the calculation of the interest rate and interest payments during the Floating Rate Period will be modified in accordance with this Section 2.5(f).

**Section 2.6**     Subordination.

(a) The Company, for itself, its successors and assigns, covenants and agrees, and each holder of Notes by the holder's acceptance thereof, likewise covenants and agrees, that the payment of the principal of and interest on each and all of the Notes is and will be expressly subordinated in right of payment to the prior payment in full of all Senior Indebtedness, subject to clause (j) of this Section 2.6, to the extent and in the manner described in this Section 2.6 and Section 16.01 of the Base Indenture.

(b) In the event of the insolvency, bankruptcy, receivership, liquidation or other marshalling of the assets and liabilities of the Company (subject to the power of a court of competent jurisdiction to make other equitable provision reflecting the rights conferred upon the Senior Indebtedness and the holders thereof with respect to the Notes and the holders thereof by a lawful plan of reorganization under applicable bankruptcy law):

(i) the holders of all Senior Indebtedness shall first be entitled to receive payment in full in accordance with the terms of such Senior Indebtedness of the principal thereof, premium, if any, and the interest due thereon (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency or similar law now or hereafter in effect) before the holders of the Notes are entitled to receive any payment upon the principal of or interest on indebtedness evidenced by the Notes;

(ii) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the holders of the Notes would be entitled except for the provisions of Section 16.01 of the Base Indenture and this Section 2.6, including any such payment or distribution that may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Notes, shall be paid by the liquidating trustee or agent or other Person making such payment or distribution, whether a bankruptcy trustee, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, in accordance with the priorities then existing among holders of Senior Indebtedness for payment of the aggregate amounts remaining unpaid on account of the principal, premium, if any, and interest (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency or similar law now or hereafter in effect) on the Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any other concurrent payment or distribution to the holders of such Senior Indebtedness; it being understood that if the holders of the Notes shall fail to file a proper claim in the form required by any proceeding referred to in this subparagraph (ii) prior to 30 days before the expiration of the time to file such claim or claims, then the holders of Senior Indebtedness are hereby authorized to file an appropriate claim or claims for and on behalf of the holders of the Notes, in the form required in any such proceeding; and

(iii) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, including any such payment or distribution that may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinate to the payment of the Notes shall be received by the Trustee or holders of the Notes before all Senior Indebtedness is paid in full, such payment or distribution shall be paid over to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment of assets of the Company for all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

Subject to the payment in full of all Senior Indebtedness, the holders of the Notes shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Indebtedness until the principal of and interest on the Notes shall be paid in full and no such payments or distributions to holders of such Senior Indebtedness to which the holders of the Notes would be entitled except for the provisions of Section 16.01 of the Base Indenture and this Section 2.6, of cash, property or securities otherwise distributable to the holders of Senior Indebtedness shall, as between the Company, its creditors, other than the holders of Senior Indebtedness, and the holders of the Notes, be deemed to be a payment by the Company to or on account of the Senior Indebtedness. It is understood that the provisions of this Section 2.6 are intended solely for the purpose of defining the relative rights of the holders of the Notes, on the one hand, and the holders of Senior Indebtedness, on the other hand. Upon any payment or distribution of assets of the Company referred to in this Section 2.6, the Trustee and the holders of the Notes shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such proceeding for the insolvency, bankruptcy, receivership, liquidation or other marshalling of the assets and liabilities of the Company is pending or upon a certificate of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the holders of the Notes for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount hereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Section 2.6. In the absence of any such liquidating trustee, agent or other Person, the Trustee shall be entitled to rely upon a written notice by a Person representing itself to be a holder of Senior Indebtedness (or a trustee or representative on behalf of such holder) as evidence that such Person is a holder of Senior Indebtedness (or is such a trustee or representative). With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Section 2.6, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Section 2.6 against the Trustee. The Trustee, however, shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness by reason of the execution of the Base Indenture, this First Supplemental Indenture, or any other supplemental indenture entered into pursuant to Section 2.01 or Article 10 of the Base Indenture, and shall not be liable to any such holders if it shall mistakenly pay over or distribute to or on behalf of holders of the Notes or the Company moneys or assets to which any holders of Senior Indebtedness shall be entitled by virtue of this Section 2.6.

(c) In the event and during the continuation of any default in the payment of principal of, or premium, if any, or interest on, any Senior Indebtedness, beyond any applicable grace period, or if any event of default with respect to any Senior Indebtedness shall have occurred and be continuing, or would occur as a result of the payment referred to hereinafter, permitting the holders of such Senior Indebtedness (or a trustee on behalf of the holders thereof) to accelerate the maturity thereof, then, unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, no payment or principal of or interest on the Notes, shall be made by the Company.

(d) Nothing contained in the Base Indenture, this First Supplemental Indenture, any other supplemental indenture entered into pursuant to Section 2.01 or Article 10 of the Base Indenture, or in any of the Notes shall: (i) impair, as between the Company, its creditors, other than the holders of Senior Indebtedness, and holders of the Notes, the obligations of the Company, which are unconditional and absolute, to make, or prevent the Company from making, at any time except as provided in clauses (b), (c), or (j) of this Section 2.6, payments of principal of, or interest (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency, or similar law now or hereafter in effect) on, the Notes, as and when the same shall become due and payable in accordance with the terms of the Notes; (ii) affect the relative rights of the Holders of the Notes and creditors of the Company other than the holders of the Senior Indebtedness; (iii) except as otherwise expressly provided in the Base Indenture, this First Supplemental Indenture and the Notes with respect to the limitation on the rights of the Trustee and the holders of Notes, to accelerate the maturity of the Notes and pursue remedies upon such an acceleration, prevent the holder of any Notes or the Trustee from exercising all remedies otherwise permitted by applicable law upon default thereunder, subject to the rights, if any, under this Section 2.6 of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of such remedy; or (iv) prevent the application by the Trustee or any Paying Agent of any moneys deposited with it hereunder to the payment of or on account of the principal of, or interest on, the Notes or prevent the receipt by the Trustee or any Paying Agent of such moneys, if, prior to the third Business Day prior to such deposit, the Trustee or such Paying Agent did not have written notice of any event prohibiting the making of such deposit by the Company.

(e) Each holder by his acceptance of any Notes authorizes and expressly directs the Trustee on such holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in the Indenture, and appoints the Trustee such holder's attorney-in-fact for such purposes, including, in the event of any termination, winding up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors by the Company, a marshalling of the assets and liabilities of the Company) tending toward the liquidation of the property and assets of the Company, the filing of a claim for the unpaid balance of the Notes in the form required in those proceedings.

The Company shall give prompt written notice to the Trustee of any fact known to the Company that would prohibit the Company from making any payment to or by the Trustee in respect of the Notes pursuant to the provisions of this Section 2.6 or Article 16 of the Base Indenture. The Trustee shall not be charged with the knowledge of the existence of any default or event of default with respect to any Senior Indebtedness or of any other facts that would prohibit the making of any payment to or by the Trustee unless and until the Trustee shall have received notice in writing at its Corporate Trust Office to that effect signed by an Officer of the Company, or by a holder of Senior Indebtedness or a trustee or agent thereof; and prior to the receipt of any such written notice, the Trustee shall, subject to Article 7 of the Base Indenture, be entitled to assume that no such facts exist; provided that, if the Trustee shall not have received the notice provided for in this Section 2.6 at least two Business Days prior to the date upon which, by the terms of the Indenture, any monies shall become payable for any purpose (including, without limitation, the payment of the principal of or interest on any Note), then, notwithstanding anything herein to the contrary, the Trustee shall have full power and authority to receive any monies from the Company and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary that may be received by it on or after such prior date except for an acceleration of the Notes prior to such application. The foregoing shall not apply if the Paying Agent is the Company. The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or itself to be a holder of any Senior Indebtedness (or a trustee on behalf of, or agent of, such holder) to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee or agent on behalf of any such holder. In the event that the Trustee determines in good faith that any evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Section 2.6 or Article 16 of the Base Indenture, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Section 2.6 or Article 16 of the Base Indenture and, if such evidence is not furnished to the Trustee, the Trustee may defer any payment to such Person pending such evidence being furnished to the Trustee or a judicial determination that such Person has the right to receive such payment.

(f) Notwithstanding the provisions of this Section 2.6 or any other provisions of the Indenture, neither the Trustee nor any Paying Agent shall be charged with knowledge of the existence of any Senior Indebtedness or of any event that would prohibit the making of any payment or moneys to or by the Trustee or such Paying Agent, unless and until a Responsible Officer of the Trustee or such Paying Agent shall have received written notice thereof from the Company or from the holder of any Senior Indebtedness or from the representative of any such holder.

(g) The Trustee shall be entitled to all of the rights set forth in this Section 2.6 in respect of any Senior Indebtedness at any time held by it in its individual capacity to the extent set forth in Section 7.04 of the Base Indenture.

(h) The failure to make a payment pursuant to the Notes by reason of any provision in this Section 2.06 shall not be construed as preventing the occurrence of a default or any Event of Default.

(i) Nothing contained in this Section 2.6 shall apply to the claims of, or payments to, the Trustee under or pursuant to Section 7.06 of the Base Indenture.

(j) The subordination provisions in this Section 2.6 or Article 16 of the Base Indenture do not apply to amounts due to the Trustee pursuant to other sections of the Indenture, including Section 7.06 of the Base Indenture.

**Section 2.7** Events of Default; Acceleration. All of the Events of Default set forth in clauses (a), (b), (c), (d) and (e) of Section 6.01 of the Base Indenture will apply with respect to the Notes. Notwithstanding the foregoing, because the Company will treat the Notes as Tier 2 capital (or its then equivalent if the Company were subject to such capital requirement) for purposes of capital adequacy guidelines of the Federal Reserve Board as then in effect and applicable to the Company, upon the occurrence of an Event of Default other than an Event of Default set forth in clause (d) or (e) of Section 6.01 of the Base Indenture, neither the Trustee nor the holders of the Notes may accelerate the maturity of the Notes and make the principal of, and any accrued and unpaid interest on, the Notes, immediately due and payable. Solely with respect to the Notes, and not for the purposes of any other Securities, clause (d) and (e) of Section 6.01 of the Base Indenture shall be replaced in their entirety with the following:

“(d) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of the property of the Company, or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(e) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Company or for any substantial part of the property of the Company, or shall make any general assignment for the benefit of creditors; or”.

**Section 2.8** No Sinking Fund. The Notes are not entitled to the benefit of any sinking fund.

**Section 2.9** No Conversion or Exchange Rights. The Notes shall not be convertible into or exchangeable for any equity securities, other securities or other assets of the Company or any Subsidiary of the Company.

**Section 2.10** No Defeasance or Covenant Defeasance. Sections 14.02, 14.03, 14.04 and 14.05 of the Base Indenture shall not be applicable to the Notes.

**ARTICLE 3**  
**REDEMPTION OF THE NOTES**

**Section 3.1**            *Optional Redemption.* The Notes shall not be redeemable prior to November 15, 2026, except as provided in Section 3.2. The Company may redeem the Notes, at its sole option, beginning with the Interest Payment Date of November 15, 2026 and on any Interest Payment Date thereafter, in whole or in part, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the Redemption Date, and any such redemption may be subject to the satisfaction of one or more conditions precedent set forth in the applicable notice of redemption (an “**Optional Redemption**”). No such Optional Redemption of the Notes by the Company prior to the Maturity Date shall be made without the prior approval of the Federal Reserve Board, to the extent that such approval is then required under the rules of the Federal Reserve Board. The Notes are not subject to repayment at the option of the holders of Notes.

**Section 3.2**            *Redemption of Special Events.* Other than in the case of an Optional Redemption, the Notes may not be redeemed by the Company prior to the Maturity Date, except the Company may, at its sole option, redeem the Notes at any time before the Maturity Date in whole, but not in part, upon or after the occurrence of a Tax Event, a Tier 2 Capital Event or if the Company is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended. Any such redemption of the Notes will be at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the Redemption Date, and any such redemption may be subject to the satisfaction of one or more conditions precedent set forth in the applicable notice of redemption. Notwithstanding the foregoing, installments of interest on any Notes that are due and payable on Interest Payment Dates falling on or prior to the applicable Redemption Date will be payable on such Interest Payment Dates to the holders of the Notes at the close of business on the relevant record dates specified in Sections 2.5(a) and (b) above in accordance with the Notes and this Indenture. No such redemption of the Notes by the Company prior to the Maturity Date shall be made without the prior approval of the Federal Reserve Board, to the extent that such approval is then required under the rules of the Federal Reserve Board.

**Section 3.3**            *Notice to Trustee.* If the Company elects to redeem the Notes pursuant to the redemption provisions of Section 3.01 or Section 3.02 of this First Supplemental Indenture, at least 60 days prior to the Redemption Date (unless a shorter notice shall be agreed to in writing by the Trustee but in any event not less than 45 days prior to the Redemption Date), the Company shall furnish to the Trustee an Officer’s Certificate setting forth (i) the applicable section of this Indenture pursuant to which the redemption shall occur, (ii) the Redemption Date, (iii) the principal amount of Notes to be redeemed, (iv) the redemption price and (v) a Board Resolution.

**Section 3.4**            *Partial Redemption.* In the case of a redemption pursuant to Section 3.1, if less than all of the Notes are to be redeemed, the Notes to be redeemed will be selected in accordance with the rules of DTC (or, in the case of any certificated Notes, by lot, on a pro rata basis or in such other manner the Trustee deems fair and appropriate unless otherwise required by applicable law). The Trustee shall promptly notify in writing the Company of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes selected shall be in minimum amounts of \$1,000 or integral multiples of \$1,000 in excess thereof; no Notes of a principal amount of \$1,000 or less shall be redeemed in part, except that if all of the Notes of a holder are to be redeemed, the entire outstanding amount of Notes held by such holder, even if not equal to \$1,000 or an integral multiple of \$1,000 in excess thereof, shall be redeemed. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

**Section 3.5**            *Notice to Holders.* In the case of any redemption, at least 30 days but no more than 60 days before the Redemption Date, the Company shall send in accordance with the applicable procedures of the Depository, or if the Notes are not then global Securities the Company shall mail, or cause to be mailed, a notice of redemption by first-class mail to each holder of Notes to be redeemed at such holder’s registered address appearing on the register (with a copy to the Trustee). The notice shall identify the Notes to be redeemed (including the CUSIP and/or ISIN numbers thereof, if any) and shall state:

- (a)            the Redemption Date;
- (b)            the principal amount of the Notes that are being redeemed;
- (c)            each Place of Payment;

- (d) the redemption price and accrued interest to the Redemption Date that is payable pursuant to Section 3.02 of the Base Indenture;
- (e) if fewer than all outstanding Notes are to be redeemed, the portion of the principal amount of such Notes to be redeemed and that, after the Redemption Date and upon surrender of such Notes, if applicable, a new Note or Notes in principal amount equal to the unredeemed portion will be issued;
- (f) the name and address of the Paying Agent;
- (g) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (h) that unless the Company defaults in making the redemption payment, interest on Notes called for redemption ceases to accrue on and after the Redemption Date;
- (i) if such notice is conditioned upon the satisfaction of one or more conditions precedent, such conditions precedent;
- (j) the applicable section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and
- (k) that no representation is made as to the correctness or accuracy of the CUSIP and/or ISIN numbers, if any, listed in such notice or printed on the Notes.

The Company may state in the notice of redemption that another Person may make payment of the redemption price and perform its obligations with respect to redemption or purchase.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; provided, that the Company shall have delivered to the Trustee, at least three Business Days prior to the requested date of delivery (or such shorter period as is satisfactory to the Trustee), a Company Request requesting that the Trustee give such notice and attaching a copy of such notice, which shall set forth the information to be stated in such notice as provided in this Article 3. If any condition precedent to a redemption has not been satisfied, the Company will provide written notice to the Trustee not less than two Business Days prior to the Redemption Date that such condition precedent has not been satisfied, that the notice of redemption is rescinded or delayed and that the redemption subject to the satisfaction of such condition precedent shall not occur or shall be delayed (or that such condition precedent is waived and such redemption shall occur or shall be delayed). The Trustee shall promptly send a copy of such notice to the holders of the Notes.

#### **ARTICLE 4** **FORM OF NOTES**

**Section 4.1** Form of Notes. The Notes and the Trustee's certificate of authentication thereon are to be substantially in the form attached as Exhibit A hereto, with such changes therein as the officer of the Company executing the Notes (by manual, electronic (e.g., ".pdf" or ".tif") or facsimile signature) may approve, such approval to be conclusively evidenced by such officer's execution thereof. To the extent the terms and conditions of the Notes are not set forth herein, such terms and conditions of the Notes shall be as set forth in the form attached as Exhibit A hereto.

#### **ARTICLE 5** **SUPPLEMENTAL INDENTURES**

**Section 5.1** Supplemental Indentures without Consent of Holders. Solely with respect to the Notes, and not for the purposes of any other Securities, Section 10.1 of the Base Indenture shall be amended to (i) delete the word "and" at the end of clause (o) thereof, (ii) replace the period at the end of clause (p) thereof with "; and" and (iii) add a new clause (q) immediately after clause (p), which shall read as follows:

“(q) to implement in accordance with the terms of this Indenture and any supplemental indenture any Three-Month Term SOFR Conventions or any Benchmark Transition Event provisions after a Benchmark Transition Event and its related Benchmark Replacement Date have occurred (or in anticipation thereof).”

**ARTICLE 6**  
**IMMUNITY OF STOCKHOLDERS, EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS**

**Section 6.1** Indenture and Notes Solely Corporate Obligations. Solely with respect to the Notes, and not for the purposes of any other Securities, Section 13.1 of the Base Indenture shall be replaced in its entirety with the following:

“No recourse for the payment of the principal of or interest on any Note, for any claim based thereon, or otherwise in respect thereof, shall be had against any incorporator, shareholder, officer, director, employee or agent, as such, past, present or future, of the Company or of any successor Person to the Company, it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this First Supplemental Indenture and the issue of the Notes.”

**ARTICLE 7**  
**MISCELLANEOUS**

**Section 7.1** Ratification of Base Indenture. Solely with respect to the Notes, the Base Indenture, as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Base Indenture in the manner and to the extent herein and therein provided.

**Section 7.2** Trustee Not Responsible for Recitals. The recitals contained herein and in the Notes, except the Trustee’s certificates of authentication, shall be taken as statements of the Company and not those of the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representations as to the validity or sufficiency of this First Supplemental Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of the Notes or of the proceeds thereof.

**Section 7.3** New York Law To Govern. THIS FIRST SUPPLEMENTAL INDENTURE AND EACH NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

**Section 7.4** Severability. In case any provision in this First Supplemental Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired by such invalid, illegal or unenforceable provision.

**Section 7.5** Counterparts. This First Supplemental Indenture may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this First Supplemental Indenture and of signature pages by facsimile or electronic format (i.e., “.pdf” or “.tif”) transmission shall constitute effective execution and delivery of this First Supplemental Indenture as to the parties hereto and may be used in lieu of the original First Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or electronic format (i.e., “.pdf” or “.tif”) shall be deemed to be their original signatures for all purposes provided that, notwithstanding anything herein to the contrary, the Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by such Trustee pursuant to procedures approved by such Trustee.

**Section 7.6** Benefits of First Supplemental Indenture. Nothing in this First Supplemental Indenture or in the Notes, express or implied, shall give to any Person, other than the parties to this First Supplemental Indenture and their successors under this First Supplemental Indenture and the holders of the Notes from time to time, any benefit or any legal or equitable right, remedy or claim under this First Supplemental Indenture.



**Section 7.7**      Conflict with Base Indenture. If any provision of this First Supplemental Indenture relating to the Notes is inconsistent with any provision of the Base Indenture, such provision of this First Supplemental Indenture shall control.

**Section 7.8**      Provisions of Trust Indenture Act Controlling. This First Supplemental Indenture is subject to the provisions of the Trust Indenture Act that are required to be part of the Indenture and shall, to the extent applicable, be governed by such provisions. If any provision of this First Supplemental Indenture limits, qualifies, or conflicts with a provision of the Trust Indenture Act that is required under the Trust Indenture Act to be a part of and govern this First Supplemental Indenture, the provision of the Trust Indenture Act shall control.

**Section 7.9**      Successors. All agreements of the Company in the Base Indenture, this First Supplemental Indenture and the Notes shall bind its successors. All agreements of the Trustee in the Base Indenture and this First Supplemental Indenture shall bind its successors.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed and delivered as of the day and year first written above.

**AMALGAMATED FINANCIAL CORP.**

By: /s/ Priscilla Sims Brown

Priscilla Sims Brown  
President and Chief Executive Officer

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

By: /s/ Wally Jones

Wally Jones  
Vice President

Signature Page to First Supplemental Indenture

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## EXHIBIT A

[Note: The following legend is to be placed at the beginning of any Global Note representing Notes.]

### GLOBAL NOTE

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE REFERRED TO IN THIS SECURITY AND IS REGISTERED IN THE NAME OF A DEPOSITARY (AS DEFINED HEREIN) OR ITS NOMINEE. THIS SECURITY MAY NOT BE TRANSFERRED TO, OR REGISTERED OR EXCHANGED FOR SECURITIES REGISTERED IN THE NAME OF, ANY PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE OR A SUCCESSOR OF SUCH DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR AND NO SUCH TRANSFER MAY BE REGISTERED, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE. EVERY SECURITY AUTHENTICATED AND DELIVERED UPON REGISTRATION OF TRANSFER OF, OR IN EXCHANGE FOR OR IN LIEU OF, THIS SECURITY SHALL BE A GLOBAL SECURITY SUBJECT TO THE FOREGOING, EXCEPT IN SUCH LIMITED CIRCUMSTANCES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY (AS DEFINED HEREIN) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS SECURITY AND THE OBLIGATIONS OF THE COMPANY EVIDENCED HEREBY (1) ARE NOT DEPOSITS WITH OR HELD BY THE COMPANY AND ARE NOT INSURED BY ANY FEDERAL AGENCY, INCLUDING, WITHOUT LIMITATION, THE FEDERAL DEPOSIT INSURANCE CORPORATION AND (2) ARE SUBORDINATE IN RIGHT OF PAYMENT TO THE SENIOR INDEBTEDNESS (AS DEFINED IN THE INDENTURE IDENTIFIED HEREIN).

### AMALGAMATED FINANCIAL CORP.

#### 3.250% FIXED-TO-FLOATING RATE SUBORDINATED NOTES DUE 2031

No. 1

CUSIP: 022671 AA9

\$85,000,000

ISIN: US022671AA91

Amalgamated Financial Corp., a Delaware public benefit corporation (the “Company”), which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of \$85,000,000 U.S. DOLLARS (or such other amount as set forth in the Schedule of Increases or Decreases in the Global Note attached hereto) on November 15, 2031 (such date, the “Maturity Date”), unless redeemed prior to such Maturity Date, and to pay interest thereon as set forth below:

From and including November 8, 2021, to, but excluding, November 15, 2026 (unless redeemed prior to such date pursuant to Section 3.2 of the First Supplemental Indenture (as defined herein)) (the “Fixed Rate Period”), this note (the “Note”) will bear interest at a rate of 3.250% per year. During the Fixed Rate Period, interest on the Note will accrue from and including November 8, 2021, and will be payable semiannually in arrears on May 15 and November 15 of each year during the Fixed Rate Period, commencing on May 15, 2022 (each such date, a “Fixed Period Interest Payment Date”). The interest payable on the Note on any Fixed Period Interest Payment Date will, except as noted below, be paid to the holder of the Note at the close of business on the on May 1 and November 1 (whether or not a business day), as applicable, immediately preceding the applicable Fixed Period Interest Payment Date through November 15, 2026.

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From and including November 15, 2026, to, but excluding, the Maturity Date (unless redeemed prior to such date pursuant to Section 3.1 or Section 3.2 of the First Supplemental Indenture) (the “**Floating Rate Period**”), this Note will bear interest at a floating rate per year equal to the Benchmark, plus 230 basis points. During the Floating Rate Period, interest on the Note will accrue from and including November 15, 2026 and will be payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year, commencing on February 15, 2027 (each such date, a “**Floating Period Interest Payment Date**” and, together with a Fixed Period Interest Payment Date, an “**Interest Payment Date**”). The interest payable on the Note on any Floating Period Interest Payment Date will, except as noted below, be paid to the holder of the Note at the close of business on February 1, May 1, August 1, and November 1 of each year (whether or not a business day), as applicable, immediately preceding the applicable Floating Period Interest Payment Date through the Maturity Date or earlier redemption date. However, interest that the Company pays on the Maturity Date will be paid to the Person to whom the principal will be payable. Notwithstanding the foregoing, if the Benchmark is less than zero, then the Benchmark shall be deemed to be zero.

Principal and interest on the Note will be payable by wire transfer in immediately available funds in U.S. Dollars at an office or agency of the Company maintained for such purpose, which shall initially be the Corporate Trust Office of the Trustee.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

**Signature page follows**

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed and delivered.

Dated: November 8, 2021

**AMALGAMATED FINANCIAL CORP.**

By: /s/ Priscilla Sims Brown  
\_\_\_\_\_  
Priscilla Sims Brown  
President and Chief Executive Officer

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Notes of the series designated therein referred to in the within-mentioned Indenture.

Dated: November 8, 2021

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

By: /s/ Wally Jones  
\_\_\_\_\_  
Wally Jones  
Vice President

Signature Page to Global Note

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## REVERSE OF NOTE

### AMALGAMATED FINANCIAL CORPORATION

#### 3.250% FIXED-TO-FLOATING RATE SUBORDINATED NOTES DUE 2031

This Note is one of a duly authorized issue of Securities of the Company of a series designated as the “3.250% Fixed-to-Floating Rate Subordinated Notes Due 2031” (the “**Notes**”) initially issued in an aggregate principal amount of \$85,000,000 on November 8, 2021. Such series of Securities has been established pursuant to, and is one of an unsecured indefinite number of series of subordinated debt securities of the Company issued or issuable under and pursuant to, the Subordinated Indenture (the “**Base Indenture**”), dated as of November 8, 2021, between the Company and U.S. Bank National Association, as Trustee (herein called the “**Trustee**,” which term includes any successor trustee), as supplemented and amended by the First Supplemental Indenture, between the Company and the Trustee, dated as of November 8, 2021 (the “**First Supplemental Indenture**” and the Base Indenture as supplemented and amended by the First Supplemental Indenture, the “**Indenture**”), to which Indenture and any other indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Persons in whose names Notes are registered on the Security Register from time to time and of the terms upon which the Notes are, and are to be, authenticated and delivered. This Note shall not be valid until the Trustee manually signs the certificate of authentication on this Note. The terms, conditions and provisions of the Notes are those stated in the Indenture, those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended, and those set forth in this Note. To the extent that the terms, conditions and provisions of this Note modify, supplement or are inconsistent with those of the Indenture, then the terms, conditions and other provisions of the Indenture shall govern to the extent such terms, conditions and other provisions of this Note are not inconsistent with the terms, conditions and provisions made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended.

All capitalized terms used in this Note and not defined herein that are defined in the Base Indenture or the First Supplemental Indenture shall have the meanings assigned to them in the Base Indenture or the First Supplemental Indenture. If any capitalized term used in this Note and defined herein is also defined in the Base Indenture or the First Supplemental Indenture, in the event of any conflict in the meanings ascribed to such capitalized term, the definition of the capitalized term in this Note shall control. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

The indebtedness of the Company evidenced by the Notes, including the principal thereof and interest thereon, is, to the extent and in the manner set forth in the First Supplemental Indenture, subordinate and junior in right of payment to obligations of the Company constituting the Senior Indebtedness (as defined in the First Supplemental Indenture) on the terms and subject to the terms and conditions as provided and set forth in Section 2.06 of the First Supplemental Indenture and shall rank *pari passu* in right of payment with all other Notes and with all other unsecured subordinated indebtedness of the Company issued under the Indenture and not by its terms subordinate and junior in right of payment to the promissory notes, bonds, debentures or other evidences of indebtedness of a type that includes the Notes. Each holder by his acceptance of this Note, agrees to and shall be bound by such provisions of the Indenture and authorizes and expressly directs the Trustee on such holder’s behalf to take such actions as may be necessary or appropriate to effectuate the subordination provided in the Indenture.

During the Fixed Rate Period, interest will be computed on the basis of a 360-day year consisting of twelve 30-day months. During the Floating Rate Period, interest will be computed on the basis of a 360-day year and the actual number of days elapsed. Dollar amounts resulting from those calculations will be rounded to the nearest cent, with one-half cent being rounded upward.

If any Fixed Period Interest Payment Date for the Note or the date for the payment of principal for the Note occurring during the Fixed Rate Period falls on a day that is not a Business Day, the Company will postpone the interest or principal payment to the next succeeding Business Day, but the payments made on such dates will be treated as being made on the date that the payment was first due and the holder of the Note will not be entitled to any further interest, principal or other payments with respect to such postponements. If any Floating Period Interest Payment Date or the Maturity Date falls on a day that is not a Business Day, the Company will postpone the interest payment or the payment of principal and interest at the Maturity Date to the next succeeding Business Day (and, with respect to the Maturity Date, no additional interest will accrue on the amount payable for the period from and after the Maturity Date), unless, with respect to a Floating Period Interest Payment Date only, such day falls in the next calendar month, in which case the Floating Period Interest Payment Date will instead be the immediately preceding day that is a Business Day, and interest will accrue to, but excluding, such Floating Period Interest Payment Date as so adjusted.

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The Notes are intended to be treated as Tier 2 capital (or its then equivalent if the Company were subject to such capital requirement) for purposes of capital adequacy guidelines of the Federal Reserve Board as then in effect and applicable to the Company. If an Event of Default with respect to Notes shall occur and be continuing, the principal and any accrued and unpaid interest on the Notes shall only become due and payable in accordance with the terms and conditions set forth in Article 6 of the Base Indenture and Section 2.07 of the First Supplemental Indenture. **Accordingly, the holder of this Note has no right to accelerate the maturity of this Note in the event the Company fails to pay interest on any of the Notes or fails to perform any other obligations under the Notes or in the Indenture that are applicable to the Notes.**

The Notes may be redeemed by the Company as set forth in the Indenture.

The Notes are not entitled to the benefit of any sinking fund. The Notes shall not be convertible into or exchangeable for any equity securities, other securities or other assets of the Company or any Subsidiary.

Sections 14.02, 14.03, 14.04 and 14.05 of the Base Indenture shall not be applicable to the Notes.

The Notes are issuable and may be transferred only in fully registered form without coupons, in minimum denominations of \$1,000 or any amount in excess thereof that is an integral multiple of \$1,000.

The Company and the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note is overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest (if any) on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

**This Security is a global note, represented by one or more permanent global certificates registered in the name of the nominee of The Depository Trust Company (each a “Global Note” and collectively, the “Global Notes”). Accordingly, unless and until it is exchanged in whole or in part for individual certificates evidencing the Notes represented hereby, this Security may not be transferred except as a whole by The Depository Trust Company (the “Depository”) to a nominee of such Depository or by a nominee of such Depository or by the Depository or any nominee to a successor Depository or any nominee of such successor. Ownership of beneficial interests in this Security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the applicable Depository or its nominee (with respect to interest of Persons that have accounts with the Depository (“Participants”) and the records of Participants (with respect to interests of Persons other than Participants)). Beneficial interests in Notes owned by Persons that hold through Participants will be evidenced only by, and transfers of such beneficial interests with such Participants will be effected only through, records maintained by such Participants. Except as provided below, owners of beneficial interests in this Security will not be entitled to have any individual certificates and will not be considered the owners or holders thereof under the Indenture.**

Except in the limited circumstances set forth in Section 2.07 of the Base Indenture, Participants and owners of beneficial interests in the Global Notes will not be entitled to receive Securities in definitive form and will not be considered holders of Notes. None of the Company, the Trustee or the Paying Agent will be liable for any delay by the Depository, its nominee or any direct or indirect participant in identifying the beneficial owners of the related Notes. The Company and the Paying Agent may conclusively rely on, and will be protected in relying on, instructions from the Depository or its nominee for all purposes, including with respect to the registration and delivery, and the respective principal amounts, of the Notes to be issued.

Except as provided in Section 2.07 of the Base Indenture, beneficial owners of Global Notes will not be entitled to receive physical delivery of Notes in definitive form and no Global Note will be exchangeable except for another Global Note of like denomination and tenor to be registered in the name of the Depository or its nominee. Accordingly, each Person owning a beneficial interest in a Global Note must rely on the procedures of the Depository and, if such Person is not a Participant, on the procedures of the Participant through which such Person owns its interest, to exercise any rights of a holder under the Notes.

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The laws of some jurisdictions may require that purchasers of securities take physical delivery of those securities in definitive form. Accordingly, the ability to transfer interests in the Notes represented by a Global Note to those Persons may be limited. In addition, because the Depository can act only on behalf of its Participants, who in turn act on behalf of Persons who hold interests through Participants, the ability of a Person having an interest in Notes represented by a Global Note to pledge or transfer such interest to Persons that do not participate in the Depository's system, or otherwise to take actions in respect of such interest, may be affected by the lack of a physical definitive security in respect of such interest. None of the Company, the Trustee, the Paying Agent and the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of Notes by the Depository, or for maintaining, supervising or reviewing any records of the Depository relating to the Notes.

U.S. Bank National Association will act as the Company's Paying Agent with respect to the Notes through its offices presently located at U.S. Bank National Association, 333 Commerce Street, Suite 800, Nashville, Tennessee 37201, Attention: Wally Jones, CCTP, Vice President, U.S. Bank Global Corporate Trust, Telephone: (615) 251-0733. The Company may at any time rescind the designation of a Paying Agent, appoint a successor Paying Agent, or approve a change in the office through which any Paying Agent acts.

Customary abbreviations may be used in the name of a holder of a Note or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused the CUSIP number for the Series of Securities of which the Notes are a part to be printed on the Notes as a convenience to the holders of the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers printed hereon.

**THIS NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

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**ASSIGNMENT FORM**

To assign the within Security, fill in the form below:

I or we assign and transfer the within Security to:

(Insert assignee's legal name)

(Insert assignee's social security or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint as agent to transfer this Security on the books of Amalgamated Financial Corp. The agent may substitute another to act for it.

Your Signature:

(Sign exactly as your name appears on the other side of this Security)

Your Name:

Date:

Signature Guarantee: \*

\* NOTICE: The Signature must be guaranteed by an Institution which is a member of one of the following recognized signature Guarantee Programs: (i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP); or (iv) such other guarantee program acceptable to the Trustee.

**SIGNATURE GUARANTEE**

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Security registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Security registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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**SCHEDULE OF INCREASES OR DECREASES IN NOTE**

The initial principal amount of this Global Note is \$85,000,000. The following increases or decreases in the principal amount of this Global Note have been made:

<b>Date</b>	<b>Amount of decrease in principal amount of this Global Note</b>	<b>Amount of decrease in principal amount of this Global Note</b>	<b>Principal amount of this Global Note following such decrease or increase</b>	<b>Signature of authorized signatory of Trustee</b>



November 8, 2021

Amalgamated Financial Corp.  
275 Seventh Avenue  
New York, New York 10001

**Re: Amalgamated Financial Corp.**

Ladies and Gentlemen:

We have acted as counsel to Amalgamated Financial Corp., a Delaware public benefit corporation (the “**Company**”), in connection with the issuance and sale by the Company of \$85,000,000 in aggregate principal amount of its 3.250% Fixed-to-Floating Rate Senior Notes due 2031 (the “**Notes**”) in an underwritten public offering pursuant to an Underwriting Agreement, dated November 4, 2021, between the Company and Keefe, Bruyette & Woods, Inc., as the representative of the several underwriters listed therein (the “**Underwriting Agreement**”). The Notes were offered and sold pursuant to a prospectus supplement, dated November 4, 2021 (the “**Prospectus Supplement**”), and the accompanying base prospectus dated October 15, 2021 (the “**Base Prospectus**”, and collectively with the Prospectus Supplement, the “**Prospectus**”) that form a part of the Company’s effective registration statement on Form S-3 (File No. 333-260076) (the “**Registration Statement**”) filed by the Company with the United States Securities and Exchange Commission (the “**Commission**”) under the Securities Act of 1933, as amended (the “**Securities Act**”).

The Notes will be issued under that certain Subordinated Indenture, dated as of November 8, 2021 (the “**Base Indenture**”), as supplemented by that certain First Supplemental Indenture, dated as of November 8, 2021 (the “**Supplemental Indenture**” and, together with the Base Indenture, the “**Indenture**”), each between the Company and U.S. Bank National Association, as trustee (the “**Trustee**”).

We have examined (i) the Registration Statement, (ii) the Prospectus (iii) the Indenture and (iv) the Underwriting Agreement.

In addition to those documents set forth above, we have examined the originals, or copies certified or otherwise identified to our satisfaction, of such corporate records, documents, certificates of officers of the Company, certificates of public officials and other instruments, and we have made such other and further investigations, in each case as we have deemed necessary or appropriate, to enable us to render the opinions set forth herein.

In rendering our opinions set forth below, we have assumed (i) the authenticity of all documents submitted to us as originals, (ii) the conformity to the originals of all documents submitted to us as duplicates or certified or conformed copies and the authenticity of the originals of such documents, (iii) the full legal capacity of natural persons who have executed documents, and (v) the genuineness of all signatures. We have also assumed that the Indenture is the valid and legally binding obligation of the Trustee.

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NORTH CAROLINA | SOUTH CAROLINA | TENNESSEE | WEST VIRGINIA

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Based upon and subject to the foregoing and the limitations, qualifications, exceptions and assumptions set forth herein, we are of the opinion that the Company has duly authorized, executed and delivered the Indenture. It is further our opinion that, when the applicable provisions of the Securities Act and such "Blue Sky" or other state securities laws as may be applicable shall have been complied with and when the Notes have been duly executed, authenticated, issued and delivered by or on behalf of the Company against payment therefor in accordance with the terms of the Underwriting Agreement and the Indenture, as contemplated by the Registration Statement and the Prospectus, the Notes will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms. Our opinion relating to the enforceability of the Notes is subject to the following exceptions, limitations and qualifications: (i) the effect of bankruptcy, insolvency, fraudulent conveyance or transfer, reorganization, moratorium and other laws now or hereafter in effect relating to or affecting creditors' rights and remedies generally; (ii) the effect of general principles of equity (including, without limitation, laches and estoppel as equitable defenses, concepts of materiality, reasonableness, good faith and fair dealing, and considerations of impracticability or impossibility of performance and defenses based upon unconscionability), whether enforcement is considered or applied in a proceeding at law or in equity, and the discretion of the court before which any proceeding therefor may be brought; and (iii) the qualification that the remedies of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

Our opinions herein are limited to the laws of the State of New York, the *Delaware General Corporation Law* and, to the extent specifically referenced herein, the federal laws of the United States of America. We do not express any opinion herein on the laws of any other jurisdiction.

This letter speaks as of the date hereof. We disclaim any obligation to provide any subsequent opinion or advice by reason of any future changes or events which may affect or alter any opinion rendered herein. Our opinion is limited to the matters stated herein, and no opinion is to be implied or inferred beyond the matters expressly stated herein.

We hereby consent to the filing of this opinion as an exhibit to a Current Report on Form 8-K, which we understand will be incorporated by reference into the Prospectus and to the reference to our firm under the heading "Validity of the Notes" in the Prospectus. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act, or the rules and regulations of the Commission.

Very truly yours,

/s/ Nelson Mullins Riley & Scarborough LLP

Nelson Mullins Riley & Scarborough LLP

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## Amalgamated Financial Corp. Announces Closing of \$85 Million Subordinated Notes Offering

NEW YORK, Nov. 8, 2021 (GLOBE NEWSWIRE) -- Amalgamated Financial Corp. (the "Company") (Nasdaq: AMAL), the holding company for Amalgamated Bank (the "Bank"), today announced the closing of its underwritten public offering of \$85,000,000 aggregate principal amount of its 3.250% Fixed-to-Floating Rate Subordinated Notes due 2031 (the "Notes"). The Company intends to use the net proceeds from this offering for general corporate purposes, including for funding the cash consideration to be paid in the Company's acquisition of Amalgamated Investments Company and for ongoing working capital needs.

Keefe, Bruyette & Woods, *A Stifel Company*, acted as the sole book-running manager, and Loop Capital Markets acted as the co-manager for the Notes offering. Nelson Mullins Riley & Scarborough LLP served as legal counsel to the Company, and Squire Patton Boggs (US) LLP served as legal counsel to the underwriters.

### About Amalgamated Financial Corp.

Amalgamated Financial Corp. is a Delaware public benefit corporation and a bank holding company engaged in commercial banking and financial services through its wholly-owned subsidiary, Amalgamated Bank. Amalgamated Bank is a New York-based full-service commercial bank and a chartered trust company with a combined network of six branches in New York City, Washington D.C., San Francisco, and Boston. Amalgamated Bank was formed in 1923 as Amalgamated Bank of New York by the Amalgamated Clothing Workers of America, one of the country's oldest labor unions. Amalgamated Bank provides commercial banking and trust services nationally and offers a full range of products and services to both commercial and retail customers. Amalgamated Bank is a proud member of the Global Alliance for Banking on Values and is a certified B Corporation®. As of September 30, 2021, the Company's total assets were \$6.9 billion, total net loans were \$3.1 billion, and total deposits were \$6.2 billion. Additionally, as of September 30, 2021, the Company's trust business held \$39.5 billion in assets under custody and \$16.1 billion in assets under management.

### Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are not statements of historical or current fact nor are they assurances of future performance and generally can be identified by the use of forward-looking terminology, such as "may," "will," "anticipate," "intend," "could," "should," "would," "believe," "project," "plan," "goal," "target," "potential," "pro-forma," "seek," "contemplate," "expect," "estimate," "continue," "project," "anticipated," "modeled" or "forecasted" or the negative thereof as well as other similar words and expressions of the future. These forward-looking statements include, without limitation, the Company's intended use of the net proceeds from the Offering. Forward-looking statements are subject to risks, uncertainties and assumptions that are difficult to predict as to timing, extent, likelihood and degree of occurrence, which could cause the Company's actual results to differ materially from those anticipated in or by such statements. Potential risks and uncertainties include, but are not limited to, the Company's ability to deploy the net proceeds of the Offering as the Company currently intends. The Company cautions readers that the foregoing list of factors is not exclusive, is not necessarily in order of importance and readers should not place undue reliance on any forward-looking statements. Further, any forward-looking statement speaks only as of the date on which it is made, and the Company does not intend to and, except as required by applicable law, disclaims any obligation to update or revise any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events, unless required to do so under applicable securities laws.

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